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European Social Citizenship

# The nature and rationale for European social rights

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# Executive summary

What is the rationale for and what is the nature of EU social citizenship? Should the EU play a greater role in the spheres of social and employment rights? These questions are the starting points of the research project "*The Future of European Social Citizenship*" (EuSocialCit), which aims to provide a systematic analysis of the state of social citizenship in Europe and examine alternative policy scenarios for improvements.

In this paper, we set the stage by outlining EuSocialCit's approach. First, we provide a novel resource-based and multi-level conception of social rights (section 1). Second, we develop a synthesis of long-standing debates on the justification and feasibility of a stronger EU social citizenship (section 2). In the third section, we apply our approach to the specific policy domains studied by EuSocialCit: social investment, fair working conditions, and minimum income protection. We conclude by highlighting how our conception may open up new opportunities and modes of interventions through which the EU can positively impact the life chances of its citizens.

Our conception rests on the assumption that the essence of rights enhances the ability of individuals to obtain compliance from other individuals (horizontal power) and from public authorities (vertical power). Such ability is effective because (or to the extent that) rights holders acquire a bundle of distinctive and guaranteed power resources. In the case of social rights, in particular, this bundle empowers individuals to claim and receive material benefits in order to cope with a codified array of risks and needs.

We distinguish between three sets of resources. First, rights confer normative resources. These provide general justifications (e.g. in the form of principles or summary prescriptions included in official texts: e.g. the European Pillar of Social Right), which legitimize claims – including claims aimed at turning general principles and prescriptions into legislative provisions. In fact, the key normative resources are produced by such provisions (legal resources), which specify who holds the right, the content of the right, and the administrative framework for the provision of benefits. The second set comprises instrumental resources, which back the access to benefits, e.g. by providing supports and procedural channels for making and satisfying claims. Instrumental resources are poorly visible and poorly investigated, yet they play a key role in facilitating the exercise of rights, especially by vulnerable groups. Enforcement resources constitute the third set. These are guaranteed powers that address a third party (typically a court of law) to seek enforcement in case of disputes.

While recognizing the importance of the justiciability of rights, our conception invites a broader view. We are concerned with the concrete acquisition of rights, which hinges on a wide array of empowering factors, including the transformation of the legal content of rights into useful outputs (e.g. a monetary

benefit transferred to the right-holder's bank account, in line with the intention of pertinent legal provisions).

It is not necessary for a single actor, such as the state, to provide all three sets of power resources. We argue that several actors can be involved, formally or informally, in producing and conferring power resources: e.g. trade unions through collective bargaining or civil society associations through facilitating access. Likewise, social rights can be anchored to different levels of government, from the regional level to the EU level. Our conception enlarges the field of possible interventions in the sphere of social and employment rights, transcending the perimeter of bindingness and justiciability.

The second section of the paper directly addresses the foundational questions introduced earlier and examines what justifies European intervention (and its possible extension) in the domain of social and employment rights. In this debate, there are four main approaches. The first approach starts from the institutional asymmetry between the economic and social dimensions of integration. It argues that EU interventions are necessary for containing and compensating for the negative effects that economic integration has on the structure of social risks and needs as well as on national social protection systems. A second set of arguments justifies EU intervention in functional terms: a stronger social dimension would enhance the performance of the Economic and Monetary Union. The third group of arguments is based on a legitimacy rationale. Social protection is essential for sustaining citizens' life chances and thus underpins generalised beliefs in the fairness of public authorities and their claims to rule. Trust and support for the EU thus hinges on its commitment to balance market-making and market-correcting actions. Finally, a fourth approach is based on normative evaluations. We explore in particular two main variants of this approach. The first asserts that there are "immanent" normative critiques that require a stronger EU intervention in the social and employment sphere. This derives from the self-assigned point and purpose of the Union itself, enshrined in the Treaties. For the second variant, such duty can be derived from the principles of international social justice.

In the third section of the paper, we discuss the pertinence and cogency of the four arguments for the policy areas studied by EUSOCIALCIT. In the case of social investment, we conclude that the most convincing argument for an active EU is the 'immanent critique' of the gap between the EU's self-assigned objectives of upward social convergence and the extant situation, pointing towards divergence. In the area of fair working conditions, a greater EU role is justified by a functional rationale (the necessity to create a level playing field) and the duty to achieve the EU's self-assigned objectives of upward social convergence and gender equality. Finally, in the area of minimum income protection, the rationale for an EU role remains open ended. On the one hand, the legitimacy rationale suggests that a framework directive on minimum income could signal that the EU "cares" for its citizens. On the other hand, given the need to establish effective Eurozone stabilizers, there might be functional reasons to prioritize actions in the sphere of unemployment protection.

Based on our policy-specific probing, we do not endorse one particular normative approach but rather argue that the four groups of arguments jointly provide an array of reasons that seriously challenge

the extant status quo and its implicit or explicit justifications. Such a challenge invites both intellectuals and policymakers to open a genuinely political discussion in pertinent arenas, with a view to reflectively identifying a basis of overlapping consensus, on which to build a reasonable agenda for the future.

## Key words

*Social rights, European citizenship, European Pillar of Social Rights, EU social and employment policies, power resources, Weber, European integration*

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| | State of European Social Rights and European Social Citizenship').<br><br>2) A framework for the selection of criteria to guide policymakers and social actors in choosing priorities for the further development and implementation of social citizenship, and an in-depth study of concrete scenarios for improvement ('The Future of European Social Rights and European Social Citizenship: a Study of Alternative Policy Scenarios'). |
| **Further information** | For more information on the EuSocialCit project, its WP2 or D2.1, please visit www.eusocialcit.eu.<br><br>EuSocialCit's output can also be found in our community on Zenodo: https://zenodo.org/communities/eusocialcit. |

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# Introduction[1]

Over the last few years, the European Commission has repeatedly emphasized that, in the face of global uncertainty, the European Union (EU) has to strengthen its social dimension and foster better working and living conditions for its citizens (European Commission, 2018). To achieve this, the EU wants to strengthen social citizenship by advancing social rights, implementing the principles in the European Pillar of Social Rights (EPSR) at both the European and national level (European Commission, 2017a; 2017b; 2017c). The overarching objective of EuSocialCit is to examine the state of EU social citizenship as well as possible policy scenarios that may strengthen it. This prompts initial foundational questions for the project: what is the nature of EU social citizenship and the social rights associated with it? And, what is the rationale for the EU to be involved in providing social rights? In order to understand the state and nature of EU social citizenship and the role that the EU plays in this now and in the future, we believe that it is necessary to 'dissect' the constitutive elements of social rights at the various levels (local, national and EU) at which they are provided. To this end, this paper develops a resource-based and multi-level conception of social rights. With regard to the rationale, we offer an overview of the main approaches that prevail in the long-standing debate on the justification and feasibility of a stronger EU social citizenship and present a synthesis of these approaches that may help further the debate.

The structure of the paper is as follows. Section 1 develops our resource-based and multi-level concept of social rights[2]. It also proposes a distinction between what we call 'an EU social rights', 'Europeanized social rights' and 'EU law observant social rights'. Section 2 presents a synthesis of existing scholarly work on the rationale for EU involvement in social rights. We distinguish four types of rationales and bring them together in a synthesis. In Section 3, we apply the approaches developed in Sections 1 and 2 to specific policy domains studied by EUSOCIALCIT: social investment, fair working conditions, minimum income protection. We then assess how the different rationales presented in Section 2 play out in these specific policy domains, using the resource-based conception of individual social rights and the multi-level perspective proposed in Section 1. Section 3 explores arguments without making definitive judgments. In this exploration, we consider the role of the EU as a potential provider of social rights but also as a possible 'supporter' of social policies that does not directly contribute to social rights. We therefore distinguish different roles for the EU's interventions in the social domain. Section 4 offers conclusions.

[1] The authors would like to warmly thank Herwig Verschueren, Ane Fernandez de Aranguiz and Dorte Sindbjerg Martinsen for their very useful reviews and suggestions. We also thank all the members of the EuSocialCit consortium for their early comments on the draft of this paper. The usual disclaimer applies.

[2] In the strict sense, social rights refer to the entitlements to social security and social benefits. However, in this project, social rights also relate to employment rights and employment protection. The latter two are strictly spoken (at least in the Anglo-Saxon tradition) not social rights but are considered employment or labor rights.

# 1. A resource-based conception of social rights

## 1.1 Social citizenship in transition

Social citizenship is a key distinctive feature of European nation-states. It complements individuals' freedoms based on civil and political rights with an entitlement to benefit from social cooperation. In the Polanyian tradition, social entitlements are both a result and a multiplier of power resources. They were historically obtained through collective mobilization, in response to the Great Transformation and its extensive commodification of labour. Once obtained, social entitlements greatly improved the living conditions of workers and made them less dependent on their market positions and the unbridled discretion of employers. Social citizenship did however come with substantial inequalities, in particular gender inequality, in terms of types of social entitlements and benefit levels.

According to the Marshallian tradition, social citizenship is inextricably linked to and embedded in the cultural, political and institutional framework of the nation state. This is a historical reality that continues to exist today. In various direct and indirect ways, however, European integration has gradually modified the institutional articulation of social citizenship, reducing its exclusive connection with the nation state. A rich debate, with contrasting positions, has tried to establish the extent to which the EU has weakened or strengthened national welfare states and their evolution over time. While this debate may be relevant and pertinent, we do not address it here. Our aim is to strengthen our analytical understanding of the new institutional articulation of social rights in the EU, including the role and competencies of multilevel institutional actors.

The EU intervenes in the domain of social and employment policies by supporting and complementing the activity of Member States with a variety of instruments. These instruments include: charters, proclamations, directives, regulations, recommendations, communications, resolutions, opinions, open methods of coordination, dialogues between management and labor, collective agreements (which may become EU law through Council decisions) and - last but not least – financial support, in particular through the European Social Fund. Thanks to all such instruments, the EU has been able to put in place a significant social acquis.

From a Treaty perspective, social cohesion and social progress feature as prominent objectives of the EU. The preamble to the Treaty on the European Union (TEU) explicitly refers to the Turin European Social Charter (1961), the Community Charter of the Fundamental Social Rights of Workers (1989) and the social rights defined in the EU Charter of Fundamental Rights (2000). In Article 3 of the TEU, the Union is conceptualised as a 'social market economy', aimed at full employment and social progress, committed to combatting social exclusion and discrimination and promoting social justice and protection. Article 9 in the Treaty on the Functioning of the European Union (TFEU) introduces a so-

called social clause in EU policymaking. It states that 'in defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health'[3]. Finally, title X (articles 151-161) TFEU defines the competences of the EU vis-à-vis Member States in the domain of social and employment policies. Notably, the EU shall support and complement Member States' activities in the following areas: worker health and safety; working conditions; social security; protection of workers when their employment contract is terminated; information and consultation of workers; employment conditions for third-country nationals; re-integration of persons excluded from the labour-market; gender equality; combating social exclusion; and modernization of social protection systems.

Title X TFEU, however, does not exhaust the legal basis for EU interventions in the domain of social and employment policies. For instance, the right to move and reside freely in the territory of the Member States is underpinned by the principle of non-discrimination on the basis of nationality (TFEU, art. 18 and 48). Furthermore, the coordination of social security systems, which has conferred a subjective right to all "persons resident in the territory of one of the Member States …to be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that State" (Regulation (EC) No 883/2004), is based on articles 48 and 352 TFEU. This is also exemplified by the fact that articles 91, 114, 115 and 352 TFEU provide a legal basis for EU intervention in health and safety at work. Additionally, in the field of gender equality[4], the principle that men and women should receive equal pay for equal work has been enshrined in article 157 TFEU. Article 19 TFEU also enables legislation to combat all forms of discrimination, including discrimination based on sex. There are even more examples of social rights outside title X TFEU.

The EU has not limited its action to the provision of a new set of rights to both mobile and resident citizens. It has also supported national policies, mostly via the European Social Fund (based articles 162-164, 174, 175, 177 and 178 TFEU), with a view to improving workers' mobility and employment opportunities in the common market. More recently, the Fund for European Aid to the Most Deprived and the Youth Employment Initiative have been adopted to financially support Member States' national programs aimed at providing food and/or basic material assistance to the most deprived and supporting young people's reintegration in the labor market.

EU interventions in the domain of social policy at large, and social rights in particular, must be clearly distinguished from each other. Indeed, a social policy is a course of action aimed at achieving certain goals (mainly to do with risks and needs) through authoritative decisions (regulative, allocative) that

[3] Another important mainstreaming clause that worth be mentioned here is article 8 TFEU, which states that 'In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women'.
[4] The principle of equality between men and women was established in the Treaty of Rome 1957, with regard to equal pay. Since then, a series of directives broadened the principle of equality to cover working conditions, social security, access to goods and services, maternity protection and parental leave. The principle of equality as a common value of the EU was established in the Lisbon Treaty.

might include the creation of individual social rights. The allocation of funds for disease prevention or pharmaceutical research might form a social policy that provides a collective good, but it does not create or strengthen social rights. On the other hand, a social policy program for promoting female employment may well, among other things, introduce – under the spur of the EU - a new social entitlement to cash benefits for mothers returning to the labour market.

In order to systematize the EU's role in the realm of social rights, it is useful to differentiate between three types of interventions, which have generated three "layers" of social rights.

As shown by table 1, there is first an EU layer of social rights, which results from EU hard law. Even if the transposition of EU directives allows for a degree of national differentiation, the EU acquis in this layer has now become part and parcel of the legal provisions that sustain citizens' security vis-à-vis risks and needs.

The second layer includes Europeanized social rights, shaped by the principles, common objectives and targets set by soft law. Soft law alone cannot create fully-fledged rights; however, it can provide important components for their definition and assemblage. In most areas, national social rights have thus acquired a European dimension: they have been linked to the EU's overall normative vision.

The third layer of social rights is the strictly national type of rights. Nonetheless, the Union also plays a specific role on this front. Given the primacy of supranational law (primary and secondary, both monitored by the CJEU), any national social right (whether Dutch, German or Italian) must be compatible with the EU legal order. In this third sense, the EU has set a legal perimeter of validity that also covers the most "intimate" layer of nation-based social rights. Thus, even the basic national layer of social citizenship has become EU-law observant: not only in respect of anti-discrimination and equal treatment, but also – to a large extent – in respect of competition law[5].

With respect to this point, there is an extensive literature highlighting the asymmetry between economic and social rights within the EU, whereby the former have been systematically prioritized over the latter (see for an overview see Barnard 2017). Similarly, after the Great Recession, national social legislation has come under the increasing scrutiny of European economic surveillance, as a result of extensive changes to individual employment rights, wage and pension entitlements and collective bargaining systems (see for an overview Kilpatrick and De Witte 2014).

The perspective just outlined calls for a new analytical framework suitable for capturing the relationships and, more importantly, the possible synergies among the three layers. In order to move in this direction, we draw on the Weberian conception of "rights" as sources of power (*Machtquellen*) (Weber, 1978). In the Weberian tradition, the focus is less on collective groups (as in Polanyi) or on the nation (as in Marshall) than on the empowerment of the individual as such, situated within a stable

[5] Social security enjoys a number of derogations from competition law, but only under certain conditions subject to the CJEU review.

institutional order, regardless of its socio-political origins and nature. In Weber's perspective, rights confer to individuals the ability to obtain compliance from other individuals (horizontal power) and from public authorities (vertical power). Such ability is effective because (or to the extent that) right holders are provided with a bundle of distinctive power resources. In the Weberian conception, rights (and in particular social rights) coincide with this bundle; they are a set of individual power resources that enable citizens to claim something against someone (typically a public authority).

**Table 1. The layers of social rights**

| LAYER | LEGISLATION | EXAMPLES |
|---|---|---|
| **EU layer** | Regulations and directives: impose binding norms on the MS | Mobility rights; parental leave rights |
| **Europeanised layer** | Soft law: inspires/guides/recommends MS action through national legislation | Right to sufficient resources or to active employment services |
| **National layer (EU law observant)** | MS norms, under the review of the CJEU | Second-tier pension schemes are exempt from EU competition law only if they rest on PAYGO financing |

*Source: own elaboration*

## 1.2 Power resources: what's in a name?

We define a "social right" as a guaranteed subjective power to obtain a certain cash or in-kind benefit (table 2). Such power is in turn constituted by three kinds of distinct resources (normative, instrumental and enforcement), which enable the right holder to concretely assert his/her right (see below). As mentioned above, the 'something' that can be claimed is the concrete content of a right: the output that is related to the right should match that content. The output is defined by legislation or collective agreement and then must be 'constructed' through an administrative and practical process that assembles various elements, specifically budgetary funds, physical infrastructures and staff. One might say that these funds, infrastructures and staff are 'resources' that allow the production of the output. However, these 'resources' are not the 'power resources' that we refer to above. The difference between power resources and outputs is fundamental in EUSOCIALCIT. Without power resources, one cannot legitimately and validly claim and access outputs. This is what distinguishes a right-based from a market-based output provision (e.g. through private insurance). Both power resources and outputs are key indicators of the state of social rights and will be investigated in EUSOCIALCIT.

**Table 2. Social rights, individual power resources and outputs**

| SOCIAL RIGHTS | INDIVIDUAL POWER RESOURCES RELATED TO SOCIAL RIGHTS | | |
|---|---|---|---|
| | Normative | Instrumental | Enforcement |
| **Guaranteed subjective powers to obtain a certain benefit/service** | – Provide justifications<br>– Specify the content (who, what, how)<br>– Guarantee compliance from others and establish obligations of public authorities to provide the benefit/services | - Secure access to the content/output<br>- Provide informal remedial channels for disputes<br>- Guarantee access to justice in case of non-compliance | - Guarantee formal adjudication and enforcement |
| OUTPUTS | MEANS/RESOURCES NEEDED TO TRANSFORM CONTENT INTO OUTPUT | | |
| | Financial | Physical | Administrative/ Organizational |
| **Tangible goods assembled into benefits and services ready for delivery to individuals** | Fund allocations | Staff and infrastructures | Roles and offices, implementation and delivery rules, standard operating procedures etc. |

*Source: own elaboration*

Before discussing each type of right-related individual power resource in more detail , we need to provide a second clarification about our use of this notion. Power resources play a key role in comparative welfare studies and especially in regime theory (Esping-Andersen, 1990; O'Connor and Olsen, 1998). Our conception of individual power resources is closely related and supplemental to regime theory. The link becomes clear if we revisit the original micro-foundations of power resource theory (PRT).

In his pioneering article of 1974, Walter Korpi constructed his framework starting at the individual level: he argued that it is the perceived asymmetry in life chances that triggers a "deprivation-frustration-aggressiveness" mechanism in individuals (Korpi, 1974); shared experiences then push individuals to join together and mobilise to redress the asymmetry. In the early industrialisation phase, the primary power resource of workers was collective mobilisation, made possible by civil rights (freedom of association and demonstration). Trade unions typically orchestrated mobilisation in the industrial relations arena. With the formation of socialist parties and the extension of universal suffrage (political citizenship), the struggle shifted to the arena of democratic politics[6]. It was in this

[6] PRT's original focus was on the class struggle between workers and employers. More recently, it has extended its focus to gender, racial and ethnic conflicts (O'Connor, 1996; Korpi, 1998).

arena that workers were able to forge the necessary majorities to create the welfare state. The expansion of social policies and particularly the institutionalisation of subjective social rights generated an entirely new set of resources that promoted decommodification. This term, decommodification, refers to both a substantive and relational effect. On the one hand, the outputs of social rights directly improved the living conditions of working people, redressing pre-existing asymmetries. On the other hand, by guaranteeing access to a number of "worldly goods" (e.g. unemployment benefits) independently from the tyranny of the market, decommodification increased workers' relational power vis-a-vis employers. Decommodification however largely concerned male workers, bypassing women working in the domestic sphere, making them dependent on their husbands. And with the further development of the welfare state, some models have been better in reducing this gender gap than others, although important gender differences continue to exist across Europe in terms of wages, employment, welfare entitlements, time spent on care tasks and economic independence (Daly 2020).

Regime theory has developed several variants of a "mobilisation" model[7], centred on organised pressures from below and collective actors/action (the upward process of table 3). Such a model was elaborated with reference to the formative phase of the welfare state, but it has been re-articulated to account for subsequent developments, up to the present day. The theory's micro-foundations, however, were overshadowed in the process, and today, PRT is primarily considered and used as a macro (at most meso) theory. In its macro-formulation, PRT falls short of an in-depth analysis of the mechanism through which the formal establishment of social rights acts through collective mobilisation to result in the betterment of life chances and relational power of each worker (the downward process in table 3). Institutionalised social rights (their content and output) are a necessary but not sufficient condition for the enhancement of people's life chances; what ultimately matters is the individual encounter with the outputs of rights. Regime theory leaves this last step under-explored.

Our resource-based conception of social rights fills this theoretical gap. It argues that in order to extract both material goods and generalised relational power from social rights, one has to illuminate the guaranteed powers in these rights and the process that leverages such powers for obtaining "worldly goods". Our breakdown of rights-as-powers into their three internal power resources (normative, instrumental and enforcement) does exactly that. We mentioned above that PRT starts from the existence of asymmetries in individual life chances, which can be redressed via collective power resources. Our conception contributes to this approach by bringing classical PRT full circle. We spell out the further steps that can transform collective power resources into those individual power resources once the welfare state is in place. It is these power resources that guarantee the right-holder encounter with his/her due outputs, redressing the lack of goods, opportunities and autonomy from the market at the micro-level. And we include the question to what extent these power resources differ for social groups, in particular where gender inequality is concerned.

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[7] Parallel to the development of the power resources approach, what have been called 'resource mobilization theories' have focused on the mobilization of resources for collective action in the emergence of 'new' social movements (Korpi, 1998).

**Table 3. Power resources theory: an extension**

| LEVEL | UPWARD PROCESS → | INSTITUTIONAL FRAMEWORK → | DOWNWARD PROCESS → |
|---|---|---|---|
| **Macro** ↑ | Mobilisation and "democratic class struggle" | "Welfare state" (social policies and social entitlements) | Laws aiming at improving living and working conditions + collective empowerment ↓ |
| **Meso** ↑ | Organisation and collective voice | Parties and Party systems<br>Interest intermediation and industrial relations<br>Social administrations | Entitlement chain<br>Production of outputs ↓ |
| **Micro** ↑ | Lack of "worldly goods", chances and relational power | Individual citizenship<br>Rights + informal networks | Individual access to outputs, i.e. the "worldly goods"<br>+ relational power ↓ |

*Source: own elaboration*

## 1.3 The resource tripod

Let us now illustrate the building blocks of our conception. In Table 2 above, we have distinguished between three types of individual power resources, which we call tripod: normative, instrumental and enforcement resources.

The types form a sequence, which starts with moral principles and justifications. At an abstract and general level, any "right" needs a constructed normative position, an imagined desirable state of affairs and a legitimate justification for claim making and claim satisfaction. At this level, a "right" only exists in aspirational terms, as no counterpart is assigned the obligation to satisfy the claim. Normative positions are typically defined in intellectual/technical arenas, in connection with moral principles. Initially, they take the form of mere declaratory statements, advancing an epistemic claim to political consideration.

When officially formulated in an institutional text – typically resulting from some act of democratic deliberation that legitimises it from the input side - a declaratory principle becomes a "programmatic" right (sometimes referred to as a "manifesto" right). At the individual level, such a right does not provide immediately actionable public guarantees, but it does provide important deontic resources,

i.e. legitimate formalised justifications for demanding the transformation of the programmatic right into a fully-fledged legal right. At the institutional level, programmatic rights – such as those enshrined in national constitutions or European charters - establish a political obligation on the institutions to promote their application in accordance with their powers. In addition, programmatic rights create "negative guarantees" (Ferrajoli, 2004). At the national level, for instance, no ordinary legislative act can derogate from constitutional rights. If this happens, a case can be brought before the Constitutional Court. Similarly, at the European level, the principles set in the Treaties and Charters or other programmatic documents define the perimeters of the EU legislative initiatives.

Legislative provisions or collectively bargained agreements at the EU level generate what we call normative legal resources. Legislative (or collectively bargained) acts must be adopted by governments (or the EU) and provide a detailed and operational definition of who holds the (social) entitlement (the right-holder), the content of the (social) entitlement, and the institutional counterpart that has the duty to provide the content of the entitlement (the responsible provider). In other words, an entitlement confers guaranteed powers to claim and receive certain benefits alongside a legal obligation for a given administration to produce and deliver those benefits.

Legislative provisions may be accompanied by various legal complements, i.e. implementing acts (creating the operative conditions for making use of an entitlement) or delegated acts (for supplementing or refining the basic legislative act). Additionally, soft law plays a role, by providing guidelines and non-binding acts that go beyond 'justification'. These can provide detailed guidance for policymakers, and they can also be intended to guide the interpretation of legal resources.

Normative resources *per se* are not sufficient to guarantee a direct encounter between the holder of an entitlement and the providing administration. Through this encounter, right holders obtain their dues as a cash or in-kind benefit, which we called the "what" of social rights, i.e. the material output. As shown in the literature on take-up, many obstacles can prevent a right-holder from accessing rights. In a report on "*Access to Social Rights in Europe*" (2002), Mary Daly identified some of these obstacles, such as: a lack of precision in the specification of the right or entitlement; complexity of the application procedures; insufficient stock and flow of high-quality information or an inappropriate form and nature of information; fragmentation between levels of administration and among services, etc. For a number of reasons, people may not be aware of the "whats" they can claim, and even when they know about rights in general, they generally require an explicit action of claim making to obtain their envisaged outputs (benefits and services). Such action implies an investment of time and energy in the application process.

This brings us to a second set of resources that are required for the full actualisation of a right: instrumental resources, i.e. resources that facilitate individual access to benefits. Such resources are meant to enable right-holders to overcome such obstacles/costs. Some of the most common and effective instrumental resources include: quality information and awareness raising, user-friendly

application procedures, support with filling out forms and engaging with pertinent administrations, general guidance, counselling and mentoring.

Instrumental resources, however, are not limited to supporting individuals in their access to social rights. They also guarantee support to rights-holder in accessing justice in cases of non-compliance or rights violation from a third party. Indeed, if it is true that – following the maxim *Ubi jus, ibi remedium*[8] - the legal right and legal remedy are correlative, individuals who are entitled to a certain right might encounter difficulties in access to justice. In this respect, we identify a second group of instrumental resources, which also include the set of non-traditionally juridical procedures that facilitate access to court in cases of non-compliance, such as legal aid, public defenders or epistolary jurisdiction. Such resources are particularly important for guaranteeing that the most vulnerable groups have equal access to justice and fully benefit from their entitlements. Recent legal literature has therefore increasingly focused on the importance of mechanisms to facilitate citizens' access to justice. For example, legal aids are mechanisms to help the most disadvantaged individuals afford the high costs associated with legal proceedings, such as court and lawyers' fees, which might otherwise deter individuals from pursuing remedies through the courts.

How are instrumental resources produced and distributed? In part, instrumental resources are defined by the law itself and are made concretely available during the last stages of the overall process of output production. In other words, they are endogenously produced. However, instrumental resources also partly result from external initiatives, for example by trade unions, consumer associations, and NGOs. In these cases, they are derived exogenously, through interventions by collective actors. We know little about collective mobilisation at the meso-level in support of claim making, the delivery of benefits and services, "political" interactions between claimants and providers, conflict resolution dynamics and so on. There is scattered evidence that in various Member States (from Scandinavia to Italy), unions play a key role in the adoption of collectively bargained social rights as well as in supporting access to outputs by means of dedicated counselling and help desks, monitoring and complaint structures and so on. At the meso-level, there are often non-judicial remedial channels for settling disputes with social administrators: here, users are typically represented by collective actors. The analysis of instrumental power resources at the meso-level would be a particularly interesting topic for a conversation between the classical PRT tradition and our own conception.

The third and final type of individual power resources has to do with enforcement. Legal obligations do not always mean *de facto* compliance on the side of public authorities. The involved institution may resist action, fail to deliver outputs (benefits or services) or deliver outputs that do not match the legal content of rights. Therefore, it is important that legal rights are accompanied by a set of additional guarantees, typically consisting in judicial procedures and channels for dispute settlements and the application of rules (courts, inspectorates, arbitration bodies). Such guarantees provide

[8] Such maxim is valid for all civil law systems, while in common law ones the maxim is reversed 'Ubi remedium, ibi jus'.

enforcement resources and may be specified or implicit in the legal act establishing the right or may be the object of separate acts.

In the Marshallian tradition, the distinctive feature or necessary condition for the social rights of citizenship is "legal certainty and suability", which makes access to benefits and services reliable and predictable at the individual level (Börner, 2020). Reliability and predictability are key because they stabilise social cooperation and decrease the likelihood of divisive conflicts. This is an important point, not only conceptually, but also practically. As mentioned, in social policy the implementing organisations play a crucial role and bear specific obligations. Legal certainty and suability (i.e. legal and enforcement resources) provide right holders with direct guarantees, but they also induce compliance through the mechanism of anticipated reactions. The awareness of possible sanctions spurs providers to carry out their legal duties.

## 1.4 The entitlement chain

Since the EU is influential in the sphere of social rights, it follows that it also provides power resources. Thus within the EU's multi- level governance structure today, rights themselves can have multiple institutional anchors, with some resources developed at the EU level and others at the national or local levels (Bauböck, 2014). The social partners and other intermediary associations have also become important in the provision of some individual power resources.

To illustrate the mix of institutional actors and levels in the construction and implementation of a social right, we introduce the notion of the "entitlement chain" (table 4). This unpacks the concept of entitlement into its constitutive components, highlighting the different but complementary roles played by the various institutional actors and levels. The upper rows show the components of rights and the corresponding tripod: normative (deontic and legal), instrumental and enforcement resources. The lower rows exemplify the type of acts or measures that can be taken by the EU, the Member States, and the social partners.

The EU plays a clear role in the provision of normative resources. The EU provides deontic resources via the Treaties, inter-institutional proclamations, charters, declarations, soft law recommendations and communications, etc. These resources, such as the rights enshrined in the European Charter of Fundamental Rights, can be used by the CJEU as reference points, The Charter does not formally introduce any binding obligation to Member States, but it defines the perimeter of action of the EU institutions, which must respect the rights and observe and promote their principles in accordance with their powers (see Lock, 2019; Frantziou, 2019). The EU also provides legal resources by means of directives and regulations. Furthermore, as other sections of this paper illustrate, today the social acquis is far from negligible. EU regulations are directly applicable, while directives typically require transposition into national legislation. National institutions are the main providers of legal resources,

while the collective agreements of the social partners often have or acquire the status of laws, at both the EU and the national level.

**Table 4. The entitlement chain**

| THE TRIPOD OF POWER RESOURCES | | | | | | | |
|---|---|---|---|---|---|---|---|
| | *Normative* | | | | *Instrumental* | | *Enforcement* |
| Level | Constitutions/ Charter/ Treaties | Legislative/ Collectively bargained | Legal complements | Soft law | Procedures | | Judicial |
| **EU** | Treaties<br><br>Charters<br><br>Declarations | Directives<br><br>Regulations | Delegated and implementing acts | Recommendations<br><br>Communications<br><br>Opinions<br><br>Resolutions | Programs and initiatives | Support for individuals to lodge complaints against a MS | CJEU (Commission) |
| **MS** | Constitutions Charters | Laws Regulations | Delegated and implementing acts<br><br>Funding allocations | Guidelines and plans | Organisational designs, operating procedures, routines, and practices facilitating access | Inspective authorities<br><br>Arbitration<br><br>Informal complaints and appeals channels ombudsman | Courts of justice |
| **Social partners** | | Collective agreements | | | Dedicated structures and services providing information and assistance in claim making | Assistance and representation of claimants | Counsel and representation of litigants |
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 |

*Source: Own elaboration*

The third column of the figure includes two other sets of ancillary legal measures: both can be adopted by EU and national authorities. Implementing and delegating acts have a legal nature, but they are only taken up for the specific purpose of operationalising the primary prescriptions of a legal right. The allocation of financial resources is a key element that is typically defined by legal complements. This is normally achieved through legislative provisions (such as the annual budget law), and this is why funding belongs to legal resources. This also applies to the allocation of European funds. This is exemplified by the so-called Common Provision Regulation, which sets out common provisions for seven shared management funds, including the European Social Fund and the European Regional Development Fund. It contains the provisions needed to cater for the particularities of individual funds, in order to account for their different rationales, target groups and implementation methods.

The last set of normative resources includes soft law (the fourth column): recommendations, communications, opinions and resolutions. Since the early 2000s, the EU has used more and more of these instruments, launching a series of dedicated OMC processes that rest on common principles and shared objectives and can be considered as deontic resources. The practical effectiveness of such instruments is debated. Some authors argue that soft law has played a role in terms of policy adaptations and change at the national level, in line with the goals proposed by the OMCs and country-specific recommendations (Zeitlin et al., 2005; Zeitlin and Vanhercke, 2018).

The fifth column of table 3 includes the instrumental resources. Under the general label of procedures, we include all endogenously produced organisational practices that explicitly intend to facilitate access to rights. These practices can be provided by social administrations and/or by the social partners and other intermediary associations. The EU has become increasingly active on this front, placing emphasis on the key role of individualised forms of raising awareness and practical enablement that are specifically directed towards vulnerable and excluded individuals (e.g. the NEETs). The recent introduction of the European Labour Authority enables the EU to provide instrumental resources to ensure that EU rules on labour mobility and social security coordination are enforced fairly and effectively. Another example of instrumental resources is the support that the Commission provides for individuals to lodge complaints against a Member State. Such a complaint can instigate an infringement procedure that may lead to a case before the CJEU.

Finally, the sixth column focuses on those guarantees that can be activated in case of non-compliance by mandated providers and/or disputes about the process and contents of delivery. The column only includes fully-fledged judicial guarantees that make a subjective right actionable and the social administrations suable. Judicial remedies are provided by courts of law, usually in the exercise of civil law jurisdiction, and they enforce rights by imposing sanctions. Litigants are frequently counselled and represented by the social partners. At the European level, the European Court of Justice can directly provide citizens with enforcement resources. On the one hand, the CJEU can intervene in and deliver judgments on cases between an individual and his/her national authorities by allowing him/her to hold the national authorities as imputable of noncompliance (Martinsen, 2015). On the other hand, the CJEU can intervene in cases between private partners, such as an employer and an employee (more specifically in dealing with preliminary questions from national courts)[9].

By separating the notion of social right into its internal components, i.e. the three sets of individual power resources that confer rights to citizens, we can move beyond the view that the existence of a right is based on its justiciability: no judicial guarantees, no rights. We have clearly and explicitly recognised that justiciability is essential in the overall entitlement chain, for both its direct and indirect implications. Furthermore, we acknowledge, with Marshall, that- from a historical perspective- the establishment of legal certainty and suability represented a watershed between a "pre" of local

[9] Individuals have also the possibility to lodge complaints against a Member State with the European Commission, which can, on the basis of this complaint, start an infringement procedure which may lead to a case submitted to the CJEU.

discretion, unsteady forms of mutualism or voluntary insurance, and a "post" of standardised legal entitlements backed by coercive resources of the state. It took a while for public administrations and employers to discharge their new duties, such as due process in the delivery of benefits for the former and paying social security contributions for the latter; moreover, the tangible and visible use of coercive law enforcement was fundamental for institutionalising the new legal schemes of protection.

Today, however, coercion has receded into the background of administrative law enforcement, which tends to privilege other measures, such as orders subject to penalty or the imposition of fines. Full democratisation, more transparency and accountability in policymaking and the implementation and expansion of the public sphere have increased the salience of justificatory standards and normative evaluations of outputs and access. It must also be taken into account that Courts (and in particular the CJEU) have recently become more active, occasionally appealing to what we called programmatic rights (e.g. the Charter on Fundamental Rights) in their doctrines and rulings (Martinsen, 2015). Marshal insisted that in order to secure social citizenship, it needed to be fully embedded in the national institutional structure, including its sanctioning apparatus. This certainly held for the immediate post-war period, when the social and institutional fabric needed to be mended, and national solidarity had to be entirely reconstructed. In the new, increasingly "post-coercive" institutional context of contemporary European democracies, we can aim to be more open and trustful towards a multi-level reconfiguration of the resources that underpin legal rights. In particular, we should proactively take advantage of the opportunities offered by the EU and creatively mobilise supranational resources in order to complement and strengthen the tripod and the entitlement chain and thus augment social security and the life chances of all citizens and to overcome existing (gender) inequalities.

The advantage of a multilevel resources approach to social rights extends beyond the possibility of grasping the opportunities that arise from the interaction of multiple levels of institutional actors. This approach also facilitates an understanding of the potential negative externalities of the European processes on national social rights. For instance, after the Great Recession, the European Semester 'soft' country specific recommendations resulted in extensive changes to individual employment rights, wages and pension entitlements in a number of countries. Cuts were imposed on public sector employment and the provision of social services in order to stabilise public finances and boost economic recovery and growth (Kilpatrick and De Witte 2014). Similarly, Member States that were struggling financially were required to reform their labour law and reduce rights related to collective bargaining, pay and other terms and conditions of employment (Achtsioglou and Doherty 2013).

## 1.5 Power resources and gender: a final note

As already suggested above, a multidimensional account of social rights in terms of individual power resources allows us to analyse the gender dimension of social rights in a fine-grained way. The literature has broadly examined the gendered implications of traditional social policies that either

reinforce female carer and male breadwinner models or equalise the position of both genders (Plomien, 2018, De la Porte et al., 2020). This literature has highlighted how the regulatory framework and the way that legislation or collective agreements identify individual right-holders (i.e. the normative resources) contribute to the genderisation or degenderisation of the acceptance and utilization of these social rights. Parental leave schemes are a prime example. An individual, non-transferrable right to parental leave and high wage replacement rates facilitate an equalisation of care practices. Conversely, when parental leave entitlements are not individual and transferrable, leaves are primarily taken by mothers, maintaining the existing genderisation (Saxonberg, 2013). As stressed by De la Porte et al. (2020), the EU regulatory framework on parental leave can have a positive or a negative impact on degenderisation. The 2010 EU Directive on Parental Leave, which introduced the requirement of one month non-transferrable leave, had very little degenderising effect, since Member States determined if and how they would support parental leave. By contrast, the recently adopted Work-Life Balance Directive (see section 3.2), which introduces the requirement of two non-transferable months and also sets a minimum level of pay for parental leave, is expected to have a clear genderising effect. One can expect that the take-up of these rights also depends on the respective instrumental and enforcement resources. Hence, disentangling the notion of social rights in terms of individual power resources should support a better understanding of their gendered dimension and how that dimension is shaped by both national and European initiatives.

# 2. Why should the EU be involved in social rights?

## 2.1 Four types of justifications

There has been an on-going debate about the reasons why the EU should or should not be involved in social rights and social policy. In this section, we will discuss four types of justification for the EU to play a role in social rights. However, it is useful to begin by underlining several reasons that we can expect the EU to take a limited role in social rights (Keune, 2012). One relates to competences. In the early years of the EU, when the Treaty of Rome was signed, it was generally accepted that the EU should stay away from social rights. The only exceptions were rights guaranteeing the coordination of social security entitlement for mobile European citizens and the associated principles of non-discrimination and the Treaty-based principle of equal pay for men and women. Economic integration was to be advanced, but the national welfare state was to remain the locus of social policies and the substantive rights associated with them. Over time, the EU's social competences have expanded, but they remain quite limited in comparison with its economic capabilities. A second, and closely related, reason is that the Treaty includes the principle of subsidiarity. This fosters national diversity and has recurrently been invoked in opposition to new EU social policy. A third reason is that the EU Member States do not easily agree on matters of social rights and social policy, which has been compounded by the successive expansions of the Union. Although unanimity is not always required when voting on social issues, the space for EU social policy is reduced by widely differing views between the Member States.

In spite of these obstacles, however, in the past 60 years, the EU has become more and more active in the area of social rights, and a substantial social acquis exists today (for an overview see European Commission 2016). This involvement culminated in the adoption of the EPSR. The EU's role in social rights varies, depending on the types of resources it provides, as discussed in Section 1. First, it is influenced by the EU layer of social rights, i.e. rights that have resulted from EU hard law. Second, it forms through Europeanised social rights, shaped by the principles, common objectives and targets set by soft law. Third, it is impacted by the layer of social entitlements that have not been affected (at least not to a significant extent), by integration: these rights have remained quintessentially national but be compatible with the EU legal order.

Our main interest here is the future of social rights, rather than the past or present: How or should the EU do more? And, on what grounds? To this effect, in this section, we begin with an overview of the four main approaches or arguments that can be distinguished in the debate on the justification of the EU's role in social rights through EU social policies:

- *Redressing imbalanced negative integration arguments*, which claim that certain policies of the Member States are endangered by certain European policies. Hence, these European

policies should be amended. This can occur explicitly or implicitly, by introducing a corrective common policy at the level of the EU or by reducing the impact of the European policy at the Member State level, through 'protective' measures by the Member States.

- *Functional arguments*, which hold that certain social policies and social rights enhance the success of existing policies (such as the Single Market, or monetary unification) in terms of these policies' own objectives.

- *Legitimacy arguments*, which consider social rights to be necessary for polity- building, providing legitimacy to the polity-building process and the outcomes of this process.

- *Normative arguments*, which fall into two groups: (i) immanent critique arguments that claim that the EU does not deliver on its 'point and purpose'; and (ii) self-standing normative arguments about why considerations of international social justice support the development of social policy at a supranational level and, more precisely, the development of EU social rights.

All four approaches yield arguments that EU involvement is necessary, but they build on different traditions. They are not mutually exclusive, are often used simultaneously and are sometimes hard to disentangle. We now discuss each approach in more detail. Subsequently, we consider the extent to which we can synthesise the debate, integrating elements of these four approaches to develop a comprehensive justification of the EU's future involvement in social rights.

## 2.2 Redressing imbalanced negative integration

A first set of arguments for EU involvement in social rights is formulated around the observation that European economic integration has reduced the ability of national actors to maintain strong welfare states with high social standards (Scharpf, 1998; Crouch 2013). Economic integration, which includes the making of markets, the euro and the Stability and Growth Pact (SGP), does not leave national welfare states untouched as was expected by the signatories of the Treaty of Rome; instead, it undermines them through creating wage and tax competitions between countries and limiting public expenditure. There is not a similar level of social integration to offset the negative impact of economic integration, and therefore, social standards are not guaranteed through EU social policies. Rather, there is a 'constitutional imbalance' (Garben, 2018) or a 'structural asymmetry' (Scharpf, 2010) between 'the market' and 'the social' in the EU legal order. Moreover, it is argued that this imbalance is reinforced by the case law of the CJEU[10], the austerity policies promoted by the EU in the context of the financial crisis, and by initiatives like the Better Regulation agenda- all of which prioritise the market over the social (Scharpf, 2010; Kilpatrick, 2018; Garben and Govaere, 2018). There are,

[10] For a counterargument, see Caporaso and Tarrow (2009).

however, periods during which the imbalance is larger and smaller, depending first and foremost on the political programmes of the EU (Crouch, 2013; Menéndez and Olsen, 2020).

There are various interpretations of how to redress this imbalance and ensure coherence between national and EU policies. One interpretation prioritises the protection of national welfare states and suggests that this is best achieved through less- rather than more- Europe, for example, by abandoning monetary integration (Höpner, 2018; Scharpf, 2016). A second view argues that this imbalance can be largely tackled by increasing the role of EU social policies. In this respect, the adoption of the EPSR may prove to be an important step in the near future (Garben, 2019). Furthermore, additional and stronger social rights can potentially be fostered by a Social Compact that would imprint the importance of social policy on the courts and the legislature and would therefore lead to more balance in EU legislative action and court decisions (Barnard, 2014). At the same time, there is widespread scepticism in this approach concerning the EU's capacity to remedy the observed imbalance through social rights alone. It is often acknowledged that this can somewhat redress the observed imbalance and strengthen the legitimacy of the integration project, but it is also generally argued that there need to be important changes in European economic governance to safeguard the effective functioning of national welfare states and maintain high social standards (Kilpatrick, 2018; Garben, 2019). For example, these changes might include measures to avoid corporate tax competition or reduce the restrictions on debt and deficits in the EMU architecture.

## 2.3 Functionalism

A second set of arguments for an EU role in social rights follows a functionalist logic: certain functional demands for social rights emerge from the on-going integration process in the economic sphere; specifically, result from the completion of the Economic and Monetary Union but also from the Single Market and the four freedoms. It is argued that these social rights imply a role for the EU and are indispensable for economic integration to work. They should guarantee a certain degree of convergence in the social models of the Member States to reduce the diversity or improper functioning of national labour markets and welfare systems (Vandenbroucke, 2017). This argument has recently been presented in a number of analyses from the European Commission, which may partly explain the Commission's renewed interest in social rights and social policy. For example, the 5-presidents' report states that:

> *'For EMU to succeed, labour markets and welfare systems need to function well and in a fair manner in all euro area Member States. Hence, employment and social concerns must feature highly in the European Semester. Unemployment, especially long term unemployment, is one of the main reasons for inequality and social exclusion. Therefore, efficient labour markets that promote a high level of employment and are able to absorb shocks without generating excessive unemployment are essential: they contribute to the smooth functioning of EMU as well as to more inclusive societies.'* (Juncker et al. 2015: 8)

One proposal that corresponds with this argument is to remedy some of the instability of the EMU setup through a common unemployment insurance system in which Member States share (part of) the costs of short-term unemployment insurance (De Grauwe and Ji, 2017; Andor, 2014; Vandenbroucke, 2020). Such a system would strengthen certain social rights, while the main objectives would be to act like an automatic stabiliser and strengthen the EMU's resilience against financial and economic shocks (Andor, 2014). This approach starts from the assumption that all Member States will suffer from an economic downturn at some point. The common unemployment insurance system would "provide a limited and predictable short-term fiscal stimulus to economies undergoing a downturn in the economic cycle (ibid.)". This would help to uphold domestic demand and therefore economic growth in the EU and would help prevent "repeating vicious circles of downgrades, austerity and internal devaluation in the eurozone (ibid.)".

In a similar vein, we can consider the fair minimum wage initiative of the Commission. Although it is framed largely in terms of promoting fairness, reducing inequality and preventing working poverty, the Commission also links this initiative to economic objectives. It argues that appropriate (fair) minimum wages support aggregate wage growth and, as a result, domestic demand, increasing the resilience of the economy (European Commission 2020: 4). In this way, the initiative, framed largely as a social policy initiative, is also aimed at improving the functioning of economic integration.

## 2.4 Social rights as a necessary element of polity building

A third approach builds on the state-building school of political development (Bartolini, 2005; Ferrera, 2005, 2017), which argues that the EU is, to some extent, replicating the process of polity-building that nation states went through starting in the sixteenth century (Ferrera, 2017). Polity building and the preservation of a polity over time involve three constitutive elements: bounding, binding and bonding (Ferrera, forthcoming). Bounding refers to boundaries or borders, i.e. the external exclusion and internal confinement. These are constitutive of polity in that they bring it into existence as a recognisable space, with distinctive features. Binding concerns legitimacy in terms of authority norms (who can rule) and evaluative norms (what authorities can do, including their accountability to the social effects of policies). Bonding refers to "the 'warm' and caring dimension of both spatial closure and vertical authority (Ferrera, forthcoming: 7)" and the fraternisation among the members of the polity, connecting them to an "imagined community" of fellow subjects or citizens and creating a common identity. These identities are tightly coupled to organised solidarity, building diffuse support and loyalty vis-à-vis the polity by giving all members both symbolic and material stakes in the polity (Ferrera, forthcoming). Starting from the bounding, binding, bonding analysis, Ferrera (2018) argues that:

> *'[A] territorially organized collectivity cannot survive and prosper without the diffuse support of its members, i.e. a set of general and positive evaluative orientations towards the collectivity as such and its authority structure, providing diffuse support capable of motivating compliance*

> *beyond self-interest. Historically, organized solidarity has played a key role in political legitimation by nurturing positive feelings about the effectiveness and fairness of the territorial government. Just like external security and internal peace, the welfare state has gradually established itself as a basic political good, i.e. an instrument serving the purpose of facilitating social cooperation, managing conflicts, sustaining generalized compliance and thus, ultimately, 'keeping the polity together'*. (Ferrera, 2018: 2-3)

Extending this argument to the EU, Ferrera argues that there is a 'free-standing political justification' for fostering bonding in the EU through EU social policies and expanding the EUs role in social rights (ibid.). This would be crucial for the legitimacy, long-term survival and prosperity of the EU and for strengthening the bonds of its citizens and stabilizing it as a collective association/community (Ferrera, 2017). On the one hand, it can be argued that the EU has been quite active in strengthening bonding among EU citizens, considering the extensive social acquis mentioned above. On the other hand, it faces many challenges in broadening and deepening this process. One obstacle is that the construction of more comprehensive EU social policies "… involves putting in place a new, socially-friendly boundary configuration by working at the margin of the traditional and highly resilient set of state boundaries, nation-based bonds and binding redistributive schemes (ibid.: 2)." Another challenge is that bonding through EU social policy often clashes with the subsidiarity principle. In addition, national welfare states largely resulted from pressure from below, i.e. as a result of the demands of the disadvantaged. Although in some cases, welfare state development followed a top-down logic, it has still proven difficult to activate and organise the voice from below in support of a stronger role for the EU in social rights, in spite of important signs of transnational mobilisation (ibid.).

This lack of support is also a matter of the limited visibility of the EU's social dimension. Over the past decades, new elements have been added to the EU's social dimension; however, these were not in the traditional workers' rights area of DG Employment and Social Affairs. Instead, they emergerd, for example, in Justice and Fundamental Rights, EU migration and asylum law and the Charter of Fundamental Rights for the EU (Kilkpatrick, 2018). For most citizens, this expansion of the EU's social dimension is less apparent. In line with the free-standing political justification argument, a comprehensive EPSR may offer a more effective way to bundle and present these rights to EU citizens and thus strengthen their attachment to the European polity.

## 2.5 Normative arguments

A fourth approach is based on normative arguments for an EU role in social rights. We can divide the normative approach into two subtypes: an immanent critique approach of the current EU and a self-standing normative approach.

The starting point of an imminent critique is a 'crisis diagnosis' that the EU fails to deliver on its own 'point and purpose' and that does not achieve some of the stated objectives of the European project.

To reach these objectives, or to realise the respective underlying principles of the EU, new or improved policies at the EU level are essential. It is argued that improving the current unsatisfactory state of affairs requires the development of social rights at the EU level. These EU social rights are the expression of shared objectives with regard to the EU's social model and of the need to develop supranational social rights to effectively advance these objectives. One such fundamental objective, as formulated by the founding fathers of the EU, is the pursuit of social cohesion within and between countries. In practical terms, this would mean the reduction of inequalities within and between countries (Vandenbroucke, 2017). This prompts the following question: can we expect inequality within and between Member States to be reduced without an EU role in the realm of social rights?

Vandenbroucke (2017) argues that in an integrated market that fosters the mobility of capital and people, Member States have a shared responsibility for the social situation in each state and that the redistributive capacity of the Member States has to be protected by supranational policies, including social policy:

> *'A union of welfare states needs collective action with regard to principles of taxation of mobile factors (corporate taxes, wealth taxes). And it must see to it that the openness, which creates opportunities across the whole union, does not diminish the internal redistributive capacity of national welfare states. Therefore, openness must be embedded in principles of reciprocity, within and between welfare states'* (ibid.: 40).

The imminent critique approach hence asks whether existing policies are sufficient to achieve the EU's fundamental objectives or the EU needs to pursue additional policies, in this case policies developing social rights. Achieving such social rights may, however, require a stronger sense of common values and of common objectives between the Member States than exists presently.

Note that some aspects of this approach are similar to the redressing imbalanced negative integration approach. One of the stated objectives of the EU has always been 'promoting national welfare states', which belongs to its 'point and purpose'. Quite similarly, the negative integration approach emphasises the need to support the objectives of national welfare states. The main difference is that the latter approach does not start from the assumption that the EU is primarily concerned with the active promotion of national welfare states. Nevertheless, some arguments fit both approaches.

There is also a fuzzy border between the immanent critique approach and the functionalist approach because 'upward convergence' has been an argument in support of creating an integrated market (hence, one of the objectives of the Single Market) and has always been a stated objective of the EU (hence, belongs to its 'point and purpose'). However, this argument does not play a prominent role in the functionalist perspective, which is primarily interested in achieving efficient, non-distorted competition in the Single Market and stability in the EMU. The immanent critique approach considers the Single Market in this context to be a factor that fails to deliver upward convergence or social cohesion, even when functioning perfectly.

A self-standing normative approach argues that considerations of international social justice justify the development of social policy at a supranational level, and more precisely, the development of social rights. Supranational social rights can achieve social justice in ways that Member States alone cannot. This argument is initially developed independently of the existence of the EU and its 'point and purpose'. At the same time, it can consider the EU level to be an (or the) appropriate level to develop such social rights, hence EU social rights. The literature on international social justice focuses predominantly on issues of distributive justice. Distributive justice is achieved "… when entitlements to economic goods are allocated to people as they ought to be (Van Parijs, 2007: 638)." This then depends on the reigning views on the criteria for certain persons (or groups) to receive and others to provide distributive support, and the boundaries of the group within which redistribution takes place (Vandenbroucke, 2017).

Distributive justice has traditionally been a domestic matter, discussed at the level of nations or cities; however, with the on-going globalisation of communication and economic activity, the debate has increasingly become about international distributive justice, based partly on the argument that increasing global interdependence and interconnectedness demand global solidarity (Van Parijs, 2007). The same can be argued for EU integration. Here we can ask the questions: "To what extent are Member States responsible for their nation's social situation, and to what extent can they count on pan- European solidarity? (Vandenbroucke, 2017)". This question is particularly relevant today, during the coronavirus crisis. EU social rights could be presented as an answer to this question.

## 2.6 Towards a synthesis?

All four approaches, each from their particular perspective, present some compelling arguments for a role for the EU in social rights, and some may apply better to certain policy areas than others. The exception is the Scharpf and Höpner version of the redressing imbalances approach that calls for less rather than more Europe. This version argues that the focus should be on safeguarding national welfare states and social rights and diminishing the toxic effects that EU integration has on these rights. EU social policies are of little relevance in this view, which underlines the importance of national social sovereignty.

All other approaches make a case for more EU social policy, but they differ with regard to the primacy they give to social rights. The redressing imbalances and the normative approaches share the normative concern for adequate overall social rights as well as the view that EU social policies are crucial in the present-day EU to achieve this objective. The former starts from the need to protect existing rights, while the latter starts from the aspiration to achieve social cohesion or upward convergence; neverless, the main concern in both approaches is fostering adequate social rights. In the functionalist and polity-building approaches, social rights are first and foremost a means to an end: improving the functioning of economic integration or strengthening the legitimacy of the EU polity.

Considering the four approaches individually, none of them offers a definitive and sufficiently developed argument on the EU's role in social rights and social policy or on how to develop such rights and policies. The redressing imbalances approach draws deserved attention to the negative social effects of economic integration but is largely reactive and takes national welfare states and social rights as its starting point. When these come under pressure, EU social policies may offer a second-best solution. In addition, other economic aspects of EU integration may require adjustment to reduce the pressure on national welfare states. This approach gives little guidance on how to strengthen social rights in the EU as a whole, with its focus on large differences between the type and level of social rights of the national welfare states.

The second approach does provide clear support for EU social policies, but this is based on their 'functional necessity', i.e. their potential to support and increase the functioning of economic integration. Therefore, it offers a very restricted view on EU social rights, which are limited to the functional requirements of economic integration. Also, it offers no self-standing justification for EU social rights and often yields relatively indeterminate conclusions as to the exact policies that are 'needed'.

The third approach rightfully focuses on the possible problems of legitimacy, identity and unity of the 'polity without a welfare state'. It convincingly argues that the durability of any polity, hence including the EU, requires bonding through organised solidarity. This points to the need for some sort of social dimension to the EU to underpin the stability of the union. However, this argument is very general: it does not provide much guidance on the shape this dimension should take, and it does not argue specifically for the EU to provide individual power resources that constitute social rights.

An imminent critique is forceful since its claim for EU social rights is based on long-standing, clearly stated fundamental principles and values of the EU. At the same time, these principles and values may remain paper tigers without a strong sense of common values and common purpose between the Member States; moreover, building such a sense of common purpose may well require additional arguments that are not immediately derivable from the EU's proclaimed objectives. Finally, the self-standing normative approach starts from the pursuit of social justice and offers a self-standing normative argument for EU social rights. However, it runs the danger of remaining at a very abstract level if it is detached from the contingent history of the EU (i.e. the EU's historical 'point and purpose') and its functional challenges. Specifically, it has the potential to present an all-in argument that is not selective towards specific policies and thus to offer insufficient purchase with regard to the actual choices to be made.

From the above, we can conclude that there are four distinct points of view from which we can consider the rationale for EU social rights, which all offer important but insufficient insights. Our goal is not to choose our favourite among the four approaches. Nor do we deem it feasible or useful to try and integrate them into one single theory of EU social rights. The bonding argument, which is crucial in the third approach, is the most compelling and overarching argument, but it is also the most general

and vague one with regards to what should be done in operational terms. While the approaches might overlap in aspects of their practical conclusions, there are important tensions between the various approaches concerning their level of analysis and scope, the primacy they give to social rights and the guidance they provide in terms of what EU social rights are required. Additionally, they may all be pertinent in different ways for different policy areas.

Importantly, the purchase and relevance of the four approaches depend on the social, economic and political conditions of particular moments in time. Therefore, we argue that the rationale for EU social rights will be found somewhere at a crossroads of these four approaches; together, they constitute the field of play. Rejecting one-dimensional approaches opens up the space for politics and a historicised analysis of the social role of the EU. It also shows that the development of the EU's role in social rights and social policies is firmly located in the realm of politics.

# 3. Why should the EU intervene in social investment, fair working conditions and minimum income protection? A first exploration

In this section, we apply the approach developed in the previous sections to the social policy domains examined by EUSOCIALCIT. The first subsection focuses on policies of empowerment through social investment, which are examined in EUSOCIALCIT Work Package 3 (WP3). The second subsection zooms in on fair working conditions, the subject matter of EUSOCIALCIT Work Package 4 (WP4). The third subsection discusses minimum income protection, referring to tasks included in EUSOCIALCIT Work Package 5 (WP5). For each of these social policy domains, we discuss the rationale of the EU's interventions. Our interest is in the constitution of social rights, but it is important to acknowledge that the EU can engage with social policy in various ways. For the purpose of this paper, it is useful to distinguish three possible roles the EU can play.

First, the EU can act as a 'supporter' of the social policies deployed in the Member States. The EU is a 'supporter' in a material sense if the EU contributes to the production of social policy outputs by providing budgetary resources to Member States. The EU can also acts as a supporter in an immaterial sense, by offering 'cognitive support'. Cognitive support consists of, for example, comparative analyses, quantitative indicators and the establishment of expert networks for which the EU is traditionally an important catalyst. In its 'supporter' role, the EU can support Member States in implementing social rights, even if the EU does not contribute to the constitution of those rights. Cognitive support has deliberately been mixed with 'guidance' in various coordination processes, from the Open Method of Coordination on Social Inclusion and Social Protection to the analyses underpinning recommendations in the context of the European Semester.

A recent example of such a material 'supportive' role is the SURE programme, through which the EU will support a variety of national work-sharing schemes to overcome the negative employment effects of the coronavirus pandemic. The EU's Recovery Fund, which was established in July 2020, is another recent example: among other things, it will buttress national health care policies. The EU's structural funds provide traditional examples of a supportive role, notably through the European Social Fund. The Fund of European Aid to the Most Deprived (FEAD), which is studied in WP5, is another example of 'support': The EU does not directly offer food assistance to deprived individuals, but it does so indirectly, through national authorities and agencies.

Second, it is conceivable that the EU would act as a direct provider of social policy outputs to citizens, even if the EU does not currently play such a role. An example would be a European basic income that is directly distributed to citizens.

Third, the EU can provide power resources to individuals that are constitutive of individual social rights: this is the focus of EUSOCIALCIT. Above, we made a distinction between an *EU layer of social rights* and *Europeanised social rights*: that distinction coincides with what is sometimes called 'hard EU law' and 'soft EU law'; in both cases, the EU provides individual power resources. For the purpose of this section, it is useful to recognise a different distinction, briefly touched upon in Section 1, which relates to the substantive impact of rights belonging to the EU layer. Some social rights created by and anchored in the EU have a 'transversal character': in principle, they do not aim to change the substance of national social rights; however, they create access to certain rights for an individual X based on the fact that an individual Y has access to these rights. The obvious example is the coordination of social security entitlements for mobile citizens: the social policies of all the Member States must comply with the EU's coordination rules. This creates specific social rights for mobile EU citizens, but it does not – at least in principle – diminish the policy autonomy of Member States with regard to the substance of those social rights. Legislation against discrimination, in which the EU plays a salient role, also has such a transversal character: regardless of the content of national social rights and policies, they must be compatible with the EU's anti-discrimination legislation. It follows that the EU's anti-discrimination legislation has had a substantive impact on national social rights, as mentioned in Section 1. Historically, anti-discrimination was a 'liberal' principle; not being discriminated against was a civil right. Anti-discrimination policies have been developed in such a way that they are now part and parcel of 'the social': gender equality, for instance, is clearly a social objective that is partly served by anti-discrimination legislation. Moreover, Article 8 TFEU not only prohibits any form of unequal treatment, it also invites the promotion of equality between men and women through positive actions. Such positive impact the substance of social rights and the genderisation of rights in particular (the Work-Life Balance Directive, discussed below, is an example). It should be noted that, with regard to the coordination of social security for mobile citizens and non-discrimination, the EU developed enforcement and instrumental resources, in addition to normative resources (below, we mention the European Labour Authority as an example of an 'instrumental resource' for mobile citizens). In addition to creating such 'transversal rights', the EU has interfered in the development of social rights with the explicit aim of impacting their substance. In this section, our interest is in this kind of EU interventions, i.e. interventions in the substance of social rights; we do not discuss the (important) role played by transversal social rights created by the EU.

These three roles – supporter, provider of outputs and provider of individual power resources – are not mutually exclusive. Budgetary support is geared towards objectives that are deemed valuable: the official recognition that certain policy objectives are valuable and merit EU support implies the creation of a deontic resource. Moreover, the logic of EU initiatives can, and often does, associate budgetary support closely with the confirmation of policy principles and thus the creation of new deontic resources for EU citizens. As mentioned earlier, cognitive support and guidance have often been mixed in EU coordination processes. Daly rightly characterises the social coordination processes as creating 'cognitive scripts' (Daly, 2017): such 'cognitive scripts' can contain varying degrees of deontic power resources for individual citizens. Finally, it is hard to see how the EU could directly

provide European social benefits of any kind if it does not underpin them with the formulation of social rights.

In other words, there can be combinations of roles (1) and (3) and roles (2) and (3). Such combinations have been developed in the past and are the most likely scenarios for future developments. The idea that the EU must become a 'holding environment for national welfare states' (Hemerijck, 2017; Ferrera, 2019) is based on such a combination: the EU becomes a true holding environment if its supportive role vis-à- vis national welfare states is based on and enriched by creating common European-wide aspirations with regard to the development of national welfare states and, thus, power resources for citizens.

Importantly, the conceptual distinction between these three roles remains relevant: if the EU only played a supportive role (role 1), there would be no EU involvement in the constitution of individual social rights, with the exception of a potentially very weak role in the generation of some deontic resources (recall the example of SURE). Conversely, the EPSR (role 3) leads to a degree of Europeanisation of social rights, even if the EU does not develop roles (1) or (2).

Our discussion of the rationale for EU intervention may strike the reader as rather destructive. We critically assess the relevance of four types of rationales: (i) arguments about imbalances due to negative integration; (ii) functional arguments; (iii) legitimacy arguments; and (iv) normative arguments (distinguishing immanent critique arguments and self-standing normative arguments). For a purported rationale to be convincing, it is not sufficient that it 'sounds good' or that it is likely to rally support among many people. A rationale, from our perspective, is an argument that is needed to make a case. Given this strict understanding of a rationale, we discard arguments that are often presented in debates about social Europe, but which we do not deem truly compelling. To avoid any misunderstanding, the research question in this section is not whether social investment, fair working conditions and minimum income protection are worthwhile objectives per se; the inquiry is about the role the EU should play with respect to these domains.

We do not explicitly examine each of the four rationales for each of the policy domains: if we omit one of the four rationales in our survey of a policy domain, it is because we do not think it is directly relevant to that specific policy domain. As mentioned, we will not discuss the coordination of social security entitlement of mobile citizens. In this paper, we are interested in social rights that apply to both immobile and mobile citizens; therefore, we do not discuss anti-discrimination legislation proper. We focus on EU interventions that aim to bear on the substance of social policies and social rights.

## 3.1 Social investment

Social investment is welfare provision that helps to 'prepare' individuals, families and societies ex ante to respond to social risks in advanced economies. This occurs through investing in, maintaining and

protecting human capabilities from early childhood through old age. Social investment policies mainly have a 'stock' function: they aim at creating, enhancing and maintaining human capital and capabilities over a lifespan, by encompassing adjustable bundles of professional assistance from child- to elderly care, including skill and training services (Hemerijck et al., 2020). Holding a social investment right means disposing of normative, instrumental and enforcement resources that empower an individual (i.e. the right-holder) to claim and access a service or benefit. For instance, the European Pillar of Social Rights (EPSR) proclaims that any European child has a right to affordable early childhood education and high quality care. Holding such rights implies, first, the existence of normative acts at the national, regional, and/or local level that define the profile of the right-holder (for instance, the starting age of the legal entitlement to childcare, the age group covered by free entitlement and the conditions for access). Second, an individual right to childcare presumes enforcement mechanisms to counter non-compliance by the relevant public authorities. Finally, in order to ensure these rights, targeted or universal support channels should inform eligible right-holders of their individual rights and how to claim them. These are all individual resources that empower the right-holder and allow him/her to claim a specific policy output in the form of a service or cash benefit.

WP3 takes stock of social rights and policy outputs in the domain of social investment and examines room for improvement. It focuses on three main policy areas: early childcare and pre-primary education, state education from primary level through university, and active labour market policies (including placement services, job subsidies, counselling, job-related vocational training and job search programmes). One of the questions WP3 addresses is whether, why and how the EU should intervene in these domains.

Social investment is a recent but already broadly charted territory for the EU (Astor et al., 2017). Starting with the launch of the Lisbon Strategy, and later with the Social Investment Package (SIP), the EU has been at the forefront of the debate on social investment. It has developed a comprehensive social policy framework, at the heart of which are key social investment elements: investing in human capital, supporting women's labour market participation, facilitating life-course transitions and a work-life balance and incentivising longer working lives. The EPSR now presents a list of social policy principles, formulated and communicated as 'social rights' that define the European social model. These rights prominently includes a list of a social investment rights, such as the right to education, training and life-long learning, the right to active support for employment, and the right to childcare and support for children. By solemnly proclaiming these principles, the EU provides citizens with deontic resources: it empowers citizens to legitimately claim these rights and call upon the public authorities in their country to deliver social investment policies fulfilling the EPSR's ambitions. The EPSR is not a legally binding document; it requires Member States and/or the EU to introduce legislative initiatives to implement its principles (cfr. recital 14 of the preamble of the Interinstitutional Proclamation of the European Pillar of Social Rights). Hence, it does not provide legal normative and enforcement resources; it does not identify the right-holders and the responsible counterparts, and it does not empower individuals to go to court in cases of non-compliance. Nevertheless, even if the EPSR is not legally binding, it builds on existing international law and the already present EU social

acquis. In the field of social investment, this is the case, for instance, for children's rights to affordable early childhood education and quality care, which are enshrined in article 24 of the EU Charter of Fundamental Rights, article 27 of the Convention on the Rights of the Child (CRC) and article 16 of the European Social Charter (ESC). As Rasnaca (2017) emphasises, this means that, even though the rights enshrined in the EPSR are not judicially cognisable, they define the perimeter of action of the EU institutions, which shall respect them and promote their application in accordance with their powers. The EPSR also reinforces the deontic resources that already exist and are available to citizens– albeit in a weak and fragmented form – in country-specific recommendations formulated in the context of the European Semester (e.g. the recommendations that call upon Member States to improve their minimum income protection schemes), and in Council or Commission Recommendations (e.g. the 2008 Recommendation on Active Inclusion and the Recommendation on Investing in Children) (European Commission, 2013a).

The EU's role in the field of social investments is not confined to the provision of deontic resources to European citizens. To deliver on its objectives, the EU primarily relies on two instruments: the European Structural and Investment (ESI) funds and soft coordination mechanisms, such as the European Semester, or other Commission (or Council) recommendations. The ESI funds enable the EU to provide Member States with budgetary resources Member Statesthat allow them to deliver services in the domain of early childcare, pre-primary school education and active labour market policies (European Commission, 2013b; Fargion and Profeti, 2016; Hemerijck et al., 2020). Thus, the EU acts as a 'supporter' of Member States by delivering on social investment-related policies and rights. Although Member States' access to ESI funds is conditional on their respect of specific thematic objectives, the EU's supportive role does not create individual power resources that enable citizens to claim benefits or services. Similarly, via the Semester's country-specific recommendations, the EU supports Member States with cognitive resources for designing national social investments policies (for overviews see Bekker, 2017; Corti, 2021); additionally, country-specific recommendations provide deontic resources that can be valorised by citizens and social actors in the national policy debate. In spite of the support they offer, country-specific recommendations do not provide 'hard' normative power resources that allow individuals to claim benefits or services from public authorities or instrumental or enforcement resources. The case is different when it comes to Commission (or Council) recommendations. Commission or Council Recommendations mainly provide cognitive support to Member States and deontic resources to individuals; however, some Recommendations indirectly contribute to the definition of individual normative resources of a legal nature and instrumental resources. An interesting example here is the Council Recommendation on the Youth Guarantee (YG) (European Council, 2013). Broadly speaking, the YG provides European citizens with deontic resources. According to the Recommendation, everyone has the right to timely and tailor-made assistance to improve employment or self-employment prospects, including the right to receive support for job search, training and requalification. Young people have the right to continued education, an apprenticeship, a traineeship or a job offer of good standing within 4 months of becoming unemployed or leaving education. The YG, however, provides more than deontic resources; indirectly, it also creates normative resources of a harder type, by contributing to the definition of the

who, what and how of social entitlements. The YG identifies the right-holder, and it also defines- with considerable detail- the eligibility criteria for access to national policies. These criteria include: the age cohort of the unemployed people (15-24 years old[11]), their educational attainment, the maximum duration of the unemployment spell (4 months) and the duration of the intervention. The content of the social entitlement is developed explicitly in the Council recommendation, which indicates the measures through which to provide support: information, counselling and guidance; outreach programs; assisting school-to-work transitions; training and work experience placement; VET, apprenticeship or internship grants; recruitment subsidies or youth entrepreneurship support. The YG defines the procedures to be applied in its implementation. Public employment services are identified as the main actors responsible for the implementation and monitoring of the YG. According to the Council recommendation, the YG has to adopt a 'partnership-based approach' to be successful: a strong organisation should establish and manage the scheme (the PESs) and must collaborate with schools, youth organisations, training institutions, private employment services, social partners and employers. By defining the who, what and how of this social entitlement, the YG provides significant normative resources to young European citizens, which help them actively claim their rights. Finally, the YG provides citizens with instrumental resources: channels that facilitate the right-holders' access to the relevant services and benefits. For instance, the YG demands that Member States create online portals for potential beneficiaries of the program. Still, the YG does not create any legal entitlement, so individuals are not empowered with enforcement resources that allow them to claim their right in Court.

The EU already plays a significant role in the realm of social investment, which largely consists of budgetary and cognitive support for Member States' production of relevant policy outputs; to a lesser extent, the EU also directly provides deontic power resources to individuals, and in some cases, it indirectly provides normative resources of a harder type. The European Commission is currently studying the introduction of a 'Child Guarantee', which will presumably combine objectives of social inclusion and social investment. Against this background, the question is: should the EU play a role in the field of social investment that goes beyond the already existing social acquis?

One cannot answer this question without investigating the rationale of the EU's initiatives in the field of social investment. Do we have functionalist arguments that justify the EU's interventions in social investment? For instance, can we say that the EU must promote social investment to buttress the Monetary Union and/or the Single Market? There is a long-standing argument about the Monetary Union that points, to some extent, in that direction. Textbook theory about 'optimal currency areas' argues that the labour market in Member States must be sufficiently flexible for a monetary union to be beneficialMember States. The EU's Employment Strategy, which was launched in 1997 in the run-up to monetary unification, is strongly influenced by this idea. The strategy deliberately promoted labour market flexibility in the form of 'flexicurity, rather than through mere deregulation of labour markets. Flexicurity means that people's employment perspectives are 'secured' by equipping

[11] Given the composition of the youth population and the local dynamics of school-to-work transitions, some Member States, such as Italy, have extended the population of NEETs covered by this initiative to 15-29 year-olds.

individuals with the right skills and support via active labour market policies, rather than by stringent employment protection. This was a key objective of the European Employment Strategy. With its emphasis on skills and adaptability, flexicurity clearly fits into social investment. In other words, social investment can be considered as a high-road supply-side strategy, which is needed in the context of a monetary union. Hence, successful social investment by the members of the monetary union is a matter of common concern. Vandenbroucke et al. (2013b) have tried to broaden this specific labour market argument to social investment policies at large, focusing on child poverty. In this view, a comparatively high level of child poverty in some Member States is synonymous with an investment deficit that may be both cause and effect of underperforming labour markets and education systems; in turn, these failing markets and systems make it difficult to achieve the degree of economic symmetry that is required in a monetary union. One could also argue that poorly performing labour markets and education systems in one country have a negative impact on economic activity in other countries via the demand channel (Alcidi et al., 2015). Although such arguments are attractive, they are beset by analytical difficulties. Firstly, the argument about the negative externalities of deficits in ECEC and education remains rather speculative. Secondly, even if the negative externality argument were accepted, it would be difficult to identify the 'silver bullet' policy that the EU would need to be support. The literature has convincingly argued that participation in early childhood education fosters cognitive skills along with attentiveness, motivation, self-control and sociability, i.e. character features that turn knowledge into know-how and people into productive citizens (Heckman, 2006). It has also been shown that higher educational attainment, especially through tertiary education, and vocational training and adult learning have a positive effect on labour force productivity. However, in terms of policies, there is no 'silver bullet' (such as public spending on ECEC or on education) that unambiguously yields widespread positive outcomes with regard to skills, educational attainment and child poverty, among other things, and would thus merit targeted material support by the EU: there is an array of diverse national contexts, and Member States might follow different paths towards successful social investment. Thirdly, the initial argument that a well-functioning monetary union mainly needs flexible labour markets, and therefore 'flexicurity', can also be criticised: a hard lesson learned from the eurozone crisis is that flexible labour markets are not what is needed most; what is needed to complete the monetary union are mutual insurance instruments and institutions that cater for stability (De Grauwe, 2018). Hence, a simplistic functionalist argument will not suffice to make a compelling case for targeted EU interventions in social investment.

Can such functionalist considerations be reinforced by 'negative integration' arguments? Is the development of social investment hampered, or even endangered, by the EU's own policy architecture – with its focus on market integration, competitiveness, and sound budgets? There is indeed prima facie evidence to that effect. During the Eurozone crisis, the EU's insistence on rapid fiscal consolidation has de facto damaged Member States' social investments, especially in highly indebted countries that struggled to cut expenditures. Bouget et al. (2015) showed that, in many countries, the tightening of fiscal policy translated into severe cuts in public social investment expenditure: it is easier to cut investments in education, training and child care than in other policy areas. For instance, real public expenditure on (tertiary) education was significantly reduced between 2008 and 2011,

especially in Greece, Ireland, Italy, Portugal and the three Baltic States. Similar trends can be observed in real expenditure on childcare, which was significantly reduced in 10 Member States, including Greece and Portugal, and expenditure on active labour market policies, which was reduced in Italy, Portugal, Ireland and Spain (for more details, see Vandenbroucke and Vanhercke, 2014).

It is important to correctly identify the monetary union's design flaw that is the root cause of these unfortunate developments. As noted, social investment can be a considered a 'high-road' policy towards a flexible supply side in the economy. Therefore, it follows that even at the zenith of the Great Recession, Member States have always received Semester recommendations in the field of ECEC, education and ALMP. Attention was paid to active support and training for the unemployed; improving the performance of public employment services; the modernisation of education and training systems, including life-long learning, vocational training and dual learning schemes; and improving the link between social assistance and activation measures though access to more personalised services (Corti, 2021). The crucial flaw in the Eurozone was its lack of a fiscal capacity and the related turn to austerity. Given the soft nature of the EU's social investment recommendations, Member States have complied with the harder fiscal governance framework by sacrificing social investment. This has been particularly the case in Member States with less fiscal leeway (Corti and Hemerijck, 2020). Hence, the first priority is for the EU to reconsider its fiscal framework and equip the monetary union with fiscal stabilisers. The fiscal framework might provide specific facilities for Member States pursuing social investment policies, e.g. via the introduction of a golden rule in the Stability and Growth Pact. A central fiscal capacity might be used to support public investment, including social investment spending, in countries hit by a severe economic shock. This is to say that we have arguments for a redesign of the monetary union that pays due attention to the need for social investment. Social investment merits a 'supportive' role by the EU's fiscal framework, but there is a difference between a supportive role and EU interventions in the realm of individuals' rights to social investment. Merely functionalist or negative-integration arguments, which focus on the design and governance of the monetary union, do not sufficiently support the case for the EU's contribution to the development of such individual rights.

However, there is a broader argument that extends beyond the predicament of the monetary union. Since the Treaty of Rome, one of the stated objectives of the EU has been to increase the living standards for all European citizens; in this respect, it has aimed to reduce regional imbalances by providing struggling regions with instruments to correct their situations and regain their competitiveness within the EU. This is where concerns with equity confront efficiency in the Single Market. The objective of upward convergence in prosperity is clearly stated in article 3 TEU, where the EU is described as a highly competitive social market economy, aimed at promoting economic, social and territorial cohesion, and solidarity among Member States. Upward convergence in prosperity across the EU implies upward convergence in the quality of human capital, and therefore successful social investment policies (Vandenbroucke, 2017).

Given the EU's objective to promote upward convergence in the context of a social market economy, human capital development and social investment are matters of common concern and merit EU support. This argument illustrates what we coined an 'immanent critique': a lack of support for social investment betrays the stated objectives of the EU. Such a critique of current affairs would account for the need to complete the monetary union along the lines indicated above, but it would develop a social investment framework for the whole Single Market.

If the 'upward convergence' argument is based on the point and purpose of the EU as it currently exists, one might add that it should also respect the constellation of the current EU Treaties and thus the principle of subsidiarity. Subsidiarity counters any EU intervention in areas where the EU lacks inclusive competencies, and therefore excludes the provision of individual power resources in the field of education and childcare. Rather, the EU should provide cognitive support and guidance (and thus deontic resources) and support Member States to prevent or correct divergence. This is in part already done via the ESI funds and what will be done by Next Generation EU; the link between the European Semester, which identifies excessive social imbalances, and these budgetary instruments, is important in this respect[12]. WP3 includes an intended examination of the interaction between national models of social investment and the EU policy framework: it should assess whether or not the current, relatively 'soft' and supportive policy framework is adequate, both in terms of governance and its substantive orientation, to sustain successful social investment in the Member States.

Finally, one might argue that an EU role in the constitution of individual power resources in the realm of social investment is a matter of legitimacy for the EU as a polity. As explained in the previous section, policy building is based on 'bounding, binding and bonding'. In order to foster 'bonding' in the EU, the EU should speak directly to individual citizens about their aspirations to develop their human capital and, therefore, empower them directly, rather than supporting them indirectly through national policies. At the most general level, this is prima facie a compelling argument, but it does not immediately settle key questions, such as: should the EU confine its role to providing 'soft' normative power resources (e.g. through recommendations) or, should the EU also provide 'harder' power resources in the realm of social investment, e.g. by creating individual legal rights? How should it address subsidiarity in this domain, when the need for 'bonding' is our starting point? Assessing the force and consequences of the legitimacy-based argument therefore requires a multi-level study. It requires a reflection on the relationship between individual empowerment and 'bonding' in a policy.

Next, one should study whether the 'bonding' argument is reflected in, for instance, the European Parliament's positions on social investment rights for European citizens, which would reinforce the 'democratic' dimension of the EU's legitimacy in this area. One should also study how citizens think about specific policies; however, one should be aware that individual attitudes on specific policies

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[12] What is missing in the current set-up, is a permanent tool designed to intervene in case of a sudden halt of public investment, including social investment (as happened after the Great Recession. A proposal in that direction, though largely inadequate in terms of amounts and design, was advanced by the Commission in 2018 with the European Investment Stabilisation Function, which aimed to support countries facing insurmountable asymmetric shocks (Claeys, 2018). The argument might be that such a fiscal capacity is not only needed for the monetary union, but for the whole Single Market.

cannot settle the more general question of whether 'bonding in the EU' requires the individual empowerment of citizens in the realm of the EU's social investment. The available empirical evidence on citizens' attitudes towards specific policies is mixed. Opinion polls show that EU citizens want a protective EU that defends the European way of life and welfare against internal and external threats. Citizens from Central, Eastern and Southern Europe expect more from the EU in terms of welfare policies, than citizens from the richer West-European and Nordic countries. However, across the board, citizens dislike the notion of a centralised European welfare state. In the case of a crisis, the majority of respondents express a clear preference for European solidarity, and especially for a permanent EU instrument rather than ad-hoc and bilateral measures. Still, a recent large survey conducted in 2020 (Cicchi et al. 2020) illustrates that respondents identify healthcare, employment protection and pensions as priorities for possible EU action. Childcare and active labour market policies are not seen as an EU priority, and education is considered to a lesser extent. A recent survey experiment also indicates that healthcare is now the top priority for EU citizens when it comes to EU collective action; the evidence suggests that this was the case before the coronavirus crisis (Beetsma et al, 2020). On the other hand, research on public attitudes vis-à-vis a European Unemployment Re-insurance indicates that citizens' support for such a re-insurance scheme crucially depends on linking it to social investment policies in the Member States (Vandenbroucke et al., 2018). The research by EUSOCIALCIT's WP6 on citizens' attitudes and expectations seeks to deepen our understanding of these observations.

It seems fair to conclude that the most convincing argument for an active EU role in social investment can be based on what we call an 'immanent critique' of the EU's current policies. This refers to the EU's self-assigned objectives of upward social convergence based on high- competitiveness, social inclusion, and a knowledge-based social market economy. The logic of that argument suggests that an EU intervention is justified in the perimeter of the current Treaties. An active role for the EU in the field of social investment includes cognitive support and guidance by the EU, which creates deontic resources for citizens; however, if we restrict ourselves to the perimeter of the Treaties, the EU has no role in defining individuals' power resources, such as the eligibility criteria for access to kindergarten, individual entitlements to specific services, the age group covered by free entitlement and the conditions for access, etc. (unless Member States unanimously agree to modify the Treaties or decide to adopt new initiatives under special legislation). Nevertheless, the EU can indirectly contribute to the constitution of power resources, as in the case of the YG and potentially the case of a future Child Guarantee. Important questions for EUSOCIALCIT concern the role of 'social investment rights' in fostering the EU's 'bonding' capacity, how subsidiarity concerns play out, and which forms such rights should take.

## 3.2 Fair working conditions

Working conditions comprise the working environment and aspects of terms and conditions of employment. This covers matters such as the organisation of work and work activities; health, safety

and well being at work; and working time and work-life balance. Social rights in the domain of working conditions protect workers (given the unequal balance of power between employers and workers) and empower individuals to manage labour-market and life-course transitions, whilst securing gender equality in such transitions. A clear example is the right to a work-life balance, which entitles parents and people with caring responsibilities to suitable leave, flexible working arrangements and access to care services. Adequate rights to a work-life balance require legislative acts that define the duration, level and transferability of the entitlement, as well as information channels that facilitate the take up of rights and benefits, and the activation of enforcement resources in case of rights-violation or non-provision.

WP4 takes stock of social rights and social policy in the domain of working conditions and examines areas for improvement. It focuses on three labour market challenges: the increase in female labour market participation during the last decades and the related need for adequate and effective work-life balance policies; the increase in highly flexible forms of non-standard employment, which requires more effective policies to ensure labour rights for the most flexible non-standard worker; and, the deficient implementation of health and safety regulations in certain sectors of the labour market and the related need to broaden coverage and strengthen compliance. Whether, how and why the EU should intervene in developing and delivering social rights are key questions for WP4. The EPSR dedicates an entire chapter to 'fair working conditions', including the right to 'work-life balance', the right to 'secure and adaptable employment', the right to 'information about employment conditions and protection in case of dismissals', the right to 'fair wages' and the right to 'healthy, safe and well-adapted work environment'. Moreover, working conditions have been charted territory for the EU for decades, with clear competencies on the subject. Article 153 of the Treaty on the Functioning of the European Union (TFEU) explicitly defines the role of the EU as supporting and complementing the activities of Member States in a number of policy fields, including working conditions. The EU can either adopt minimum requirements via directives or encourage cooperation between Member States. In other words, in this domain, the EU directly or indirectly provides normative resources to individuals, which take the form of binding legislative acts or soft recommendations. The EPSR contributes to this by setting an agenda for further initiatives, but it also provides additional deontic resources to citizens.

The directive on Work-Life balance (adopted in 2019) is a prime example of the EU's endeavours in this field. The new legislative text explicitly aims to implement EPSR principle 9: "Parents and people with caring responsibilities have the right to suitable leave, flexible working arrangements and access to care services, and women and men shall have equal access to special leaves of absence in order to fulfil their caring responsibilities and be encouraged to use them in a balanced way." The directive introduces the obligation Member Statesof at least 10 days of paid paternity leave and two mandatory months of paid and non-transferable parental leave in all Member States. It explicitly recognises care work, through the right to at least five days a year of paid leave for the assistance of dependent family members and the possibility of requesting more flexible working conditions to reconcile work and family life (Chiaregato, 2020; Plomien, 2018). The new directive clearly defines the who, what and

how of this social entitlement and thus empowers citizens with hard normative power resources. Moreover, it indirectly provides citizens with enforcement resources: they can turn to national courts in the case of non-compliance (the European provision of enforcement resources is 'indirect', as individuals cannot directly call on the ECJ).

Another recent example is the directive on Transparent and predictable working conditions (TPWC), which organises specific dimensions of protection for all employees, such as the maximum limit for trial periods, written information on working conditions provided on the first day, the right to parallel work, the right to cost-free mandatory training, and the right to a motivated written answer in case of dismissal (Bednarowicz, 2019; 2020). Thus, this directive directly provides individuals with normative power resources, and indirectly provides tem with enforcement resources. Finally, the establishment of the European Labour Authority (ELA) provides a third recent example. Formally, ELA's role consists of preserving a well-functioning and non-distorted Single Market, by organising common EU inspections and controls. These will most likely be used to monitor the implementation of the Posting of Workers Directive and the social security coordination regulations. In this context, ELA's mission is explicitly to make it easier for citizens to know their rights and reap the benefits of the internal market (Costamagna, 2019). Hence, ELA provides European mobile workers with instrumental resources: channels that make them aware of their entitlements and capable of claiming them.

Overall, the EU already plays a significant role in the realm of working conditions. This largely consists of directly providing individuals with normative and – to a lesser extent – instrumental resources and indirectly providing them with enforcement and deontic resources. Against this background, the question is if there is room for improvement in the context of the existing acquis. Or, to formulate it in a more radical way: should the EU play a role in the field of working conditions that extends beyond the existing acquis?

To answer this question, it is important to have a clear understanding of the rationale for the EU's interventions in working conditions. The Commission justified the directives on Work-Life Balance and Transparent and Predictable Working Conditions by referring to the diversity of welfare provisions across Member States. With respect to work-life balance[13], for instance, Member States' paternity leave measures vary significantly in terms of the duration, remuneration, transferability, and age of the child until which parents can access parental leave, and with respect to duration and remuneration of caregivers' leave[14]. With respect to transparent and predictable working conditions, non-standard workers[15] are not equally covered by the right to be informed in writing of their rights and obligations before undertaking employment.

[13] For an overview of national work-life policies before the adoption of the Work-life balance directive in May 2019, see Ghailani (2018).

[14] In 14 Member States, workers are entitled to at least 5 days per year, paid at least at sick pay level, while in all the others, workers are either entitled to less days or are not paid at sick pay level.

[15] This term includes a broad category of working relationships: temporary employment; part-time and on-call work; temporary agency work and other multiparty employment relationships; and, disguised employment and dependent self-employment.

This diversity in working conditions and employment regulations creates a twofold problem. First, it contradicts stated objectives of the EU, such as increasing female employment and securing gender equality, and it contradicts the principles of equality and non-discrimination enshrined in the Treaties (Art. 3 TEU, Art. 8, 19 and 157 TFEU) and EU case law (Ramos Martín 2014). Second, differences between countries undermine the level playing field needed in the Single Market. Securing a fair, level playing field was the basis of the traditional argument for developing binding EU policies with regard to health and safety at work. Historically, there was a remarkably different approach to 'pay' (which is a no-go area for the EU) and health and safety at work. Differences in wage levels are an important factor of competitiveness, so they cannot be eliminated overnight, given the different levels of development of the Member States; they are also associated with differences in productivity. In contrast, differences in the regulation of health and safety can be addressed, even within a set of countries with different levels of development; moreover, if they persist, they are perceived as an unfair, distortive element of competition. It seems that, implicitly, the same argument is accepted for differences with regard to the transparency and predictability of precarious work, and with regard to the regulation of work-life balance.

Thus, a combination of functionalist arguments and an immanent critique based on the stated objectives of the EU, justifies these new initiatives, and possibly future initiatives in the same domain. This takes the form of a harmonisation of the minimum level of protection; national regulators can set a higher level of protection for their workers.

Can we add 'negative integration' arguments to this battery of justifications? As stressed by Verschueren (2015), it is not evident that market integration creates downward pressure on working conditions. Relative labour costs depend on costs related to working conditions as well as on productivity; in turn, this depends on the technologies applied, the employees' level of training and the general material and administrative infrastructure of the country concerned. We are not saying that the integration of heterogeneous employment regulation regimes, especially after the 2004 enlargement of the EU, fails to create competitive pressure on the existing employment regulation in the most advanced welfare states of the EU. However, it is debatable if market integration created a 'race to the bottom' in working conditions.

Finally, as discussed in the context of social investment, there might be arguments for legitimacy. The basic argument about 'bonding' and the questions about its consequences that were tabled in the previous subsection apply similarly in this policy domain. Recent surveys (Cicchi et al. 2020) provide empirical evidence that citizens support EU interventions in the field of employment protection. Public support for EU regulation that is 'protective' is found to be stronger than public support for the centralisation of welfare policies (Baute et al. 2018). This is not surprising, given citizens' sensitivity to issues of fair competition. Interpreting these survey results is an important task for WP6.

In conclusion, we see traditional, compelling arguments in support of EU interventions in the field of working conditions (work-life balance, non-standard employment and occupational health), grounded

in the functional necessity to create a level playing field and the EU's self-assigned objectives of upward social convergence and gender equality. The first task is to assess whether there is room for improvement in the context of that historical acquis. Next, with regard to social investment rights, one should study whether and how individual power resources in the domain of fair working conditions contribute to 'bonding'.

## 3.3 Minimum income protection

The research implemented in WP5 zooms in on indicators of social progress, poverty and minimum income protection, and housing. EUSOCIALCIT promises to examine the role the EU should play in providing the deontic and normative resources, the instrumental resources and the enforcement resources in the domains of minimum income protection and housing rights. However, it is hard to develop a satisfactory account of the EU's role in social rights in the realm of minimum income protection and housing, without reflection on the EU's role in social protection and social progress at large. Thus, this subsection contextualises the research questions examined in WP5 more broadly. We do not discuss housing rights here.

The third component of the EPSR, which encompasses most of the themes studied in WP5, falls under the heading of 'social protection and inclusion'. Social inclusion and social protection are long-standing and core functions of national welfare states. In the realm of social inclusion and social protection, we find examples of the multidimensional resource-based understanding of social rights that we pursue in this paper. Thus, the EPSR raises questions that go beyond the specific inquiry on minimum income protection and housing mentioned above, asking: should the EU play a role in this multidimensional development of social rights in the broad domain of social inclusion and social protection? If so, what kind of role should it take in each dimension? Before touching upon these broad questions, we first delineate 'social inclusion' and 'social protection' for the purpose of this subsection. Summarily, we then clarify what it means to apply a resource-based understanding of rights to social inclusion and social protection. This is hardly an exhaustive treatment of the subject; the exposition only serves as an introduction to the question addressed in this subsection.

Minimum income protection relates to minimum standards of living and is a crucial component of social inclusion policies; labour-market re-integration policies and activation policies are other important components of social inclusion (which are often referred to as 'active inclusion'). In this subsection, we zoom in on minimum income protection; activation pertains to subsection 3.1. In all mature welfare states, minimum income protection is based on the interplay between means-tested forms of social assistance, non-means tested social security entitlements and the regulation of minimum wages. Hence, we are considering an edifice of policies. In most mature welfare states, this 'edifice' of minimum income protection, so conceived, is secured by a combination of specific deontic and normative, instrumental and enforcement resources, which vary importantly across welfare states, as well as within the EU.

Social protection concerns standards of living and extends beyond minimum standards. Social protection organises protection against social risks and applies to those whose standard of living is above the minimum that is secured by minimum income protection. For the sake of simplicity, we do not consider retirement systems in this paper (they are not studied in EUSOCIACIT); we focus on benefits for people of working age and their families. The underlying normative rationale of systems of social protection for working-age people and their families combines three perspectives: (i) social protection compensates citizens for the disadvantage they experience in terms of their standard of living when social risks materialise; they organise solidarity between people who are affected by social risks and people who are not; (ii) social protection facilitates choices, notably the choice to raise children and thereby supports the current standard of living and the future life-chances of those children; thus, adequate social protection is a precondition for successful social investment policies; (iii) social protection stabilises the standard of living of citizens and thus contributes to an overall sense of security.[16] Stability and a sense of security are 'goods' per se (Herrington, 2017, 2019; Daemen, 2020). The stabilisation function of social protection is intrinsically associated with the fact that it protects individuals against the consequences of risks that have materialised and thus remedies individual vulnerability. However, stabilisation also operates on the macro-level through positive externalities. A prime example is unemployment insurance: well-organised unemployment benefits prevent other people from becoming unemployed if an economic shock hits, by dampening the impact on effective demand. Unemployment insurance is a stabiliser par excellence, but minimum income protection also contributes to economic and social stability, notably when there are gaps in the coverage of unemployment insurance that are filled by minimum income assistance. Stability is, in turn, an important background condition for successfully sustaining minimum income protection. Any assessment of the adequacy of minimum income protection should consider this background condition of economic and social stability and the way in which stability is secured by social protection at large (Vandenbroucke, forthcoming).

There is a direct link between social protection and minimum income protection, as social protection provides part of the minimum income protection 'edifice'; there is also an indirect link, as social protection contributes to the background condition of economic and social stability.

Cash transfers are key instruments for social protection and minimum income, although tax-based support systems play an increasingly important role in minimum income protection in many welfare states, for both inactive and active adults (through in-work benefits for the latter). Moreover, since the underlying objective is to secure a certain standard of living, benefits in kind and social services are also important. In order to assess the adequacy of minimum income protection in guaranteeing a decent minimum standard of living, one has to consider the quality of benefits in kind and social services; this is why WP5 examines 'reference budgets' as an important indicator in the realm of social inclusion. The same holds for income replacement systems and child benefits: their adequacy also

[16] This delineation of social protection, focusing on the standard of living, implies that we do not include the provision of (health) care and the organisation of public health in the domain of social protection, as discussed in this section; the reimbursement of costs associated with care and health care, however, belongs to social protection, so defined.

depends on the availability of support systems in kind, i.e. services. In addition to social services, welfare states have developed sectoral policies, such as housing policies, which respond to specific needs and vulnerabilities and address specific market failures, but also support citizens' standard of living. Hence, an examination of housing policies fits well into an inquiry into social inclusion and social protection. Finally, minimum wages also contribute to minimum income protection for those who are economically active.

This overview illustrates that minimum income protection tends to be associated with schemes of minimum income assistance, which have a residual nature in the overall welfare edifice; additionally, an exploration of the role of the EU in minimum income protection entails an exploration of the EU's role in the realms of social protection and minimum wages. It is worth reiterating the three roles that stand out: the EU as supporter of national systems of social protection, the EU as a provider of social protection, and the EU as a provider of individual power resources in the realms of social protection and minimum wages (whereby we do not focus on 'transversal' social rights created by the EU). As discussed, these roles are not mutually exclusive. One might even say that the EU cannot be a supporter of national social protection schemes (e.g. through a European Unemployment Re-insurance) without some agreement about the normative ideals that underpin such policies at the EU level. A polity will not support or provide a good without attaching positive normative value to it, so the critical commentator would say that roles 1 and 2 imply a version of model 3. While this is true, there is a difference between, on the one hand, a union that simply 'collects' the normative ideals of its constituent members and supports their capacity to implement them, and, on the other hand, a union that 'sets' normative ideals. In practice, there is a continuum of possibilities in between two extreme positions: on one extreme, the members mandate (instruct) the union to implement (or contribute to the implementation of) their normative ideals; on the opposite extreme, the union issues a mandate that the Member States have to implement. In the past, EU policies in the social domain have hovered between soft variants of these two extreme positions. For instance, in the social domain, the Open Method of Coordination (OMC) emerged from the normative ideals formulated by Member States, but the OMC also contributed to a shared European perspective on social policy, which became a deontic resource in itself, or at least carried that promise (Vandenbroucke, 2002; Daly, 2017).

Hence, we are not in totally unchartered territory with the questions broached in this subsection. Since the OMC on social inclusion launched in 2000, the EU has been committed to offering cognitive support but also guidance to its Member States in the fight against poverty. To the extent that such guidance creates deontic resources, one might say that the OMC provides deontic resources. Next, the Lisbon Treaty (in force since 2009) contains important references to the value and importance of social protection, notably through the EU's assignment to be a 'social market economy' (article 3 TEU) and the so-called horizontal social clause in Article 9 TFEU. Finally, the EU is already a supporter in the realm of social assistance, albeit in a very marginal way, via the European Fund for European Aid to the Most Deprived, which is also studied in WP5 (Greiss et al., 2020). The objective of this WP is also to investigate whether – or not – the EU is even taking on role (3) in the framework of FEAD. The

question at hand in this subsection can therefore be reformulated as follows: should the EU play a role in minimum income protection that goes beyond the role as supporter? Should the focus be on minimum income assistance in the narrow sense, or, in a broader sense, on social protection, taxation and minimum wages? A well-known proposal, focusing on minimum income assistance, holds that the EU should develop a framework directive on minimum income protection, obliging Member States to organise adequate minimum income protection schemes. Rather than providing soft guidance on the fight against poverty, the EU would develop a binding legal framework with regard to the quality of minimum income assistance in the Member States. Thus, such a legal instrument would focus on minimum income protection in its narrow understanding (Aranguiz, forthcoming; Cantillon; 2019; Vandenbroucke et al., 2013a).

It has frequently been argued that the EU should play an active role in social protection and minimum income protection. This view is based on fears of the downward pressures that market integration and the four freedoms place on welfare states. Here, we should distinguish two broad issues, both related to market integration: on the one hand, de facto pressure on the level of protection that results from the impact of increased competition in an integrated market; on the other hand, de jure pressure through 'market compatibility requirements' that are imposed on social services by the Single Market regime. With regard to the de facto pressures of increased competition in an integrated market, there is no straightforward argument that European (market) integration has been a causal factor in the erosion of minimum income protection and social protection at large and/or a causal factor in the increases in poverty and inequality witnessed in a number of EU welfare states. This does not undermine the impact of the integration of a very heterogeneous set of countries in the EU after 2004, in terms of the provision of minimum income protection and social protection and social outcomes in the most advanced welfare states of the EU. Integrating countries with such varied wages is bound to create competitive pressure on social provision and social regulation in the most advanced welfare states. However, it is debatable if that has led to less generous minimum income protection and social protection; in so far as there was an erosion of social protection, other factors may have been more important than EU integration (Vandenbroucke, 2019b). Numerous scholarly debates on the impact that the Single Market regime and the European Court of Justice (ECJ) have on national social protection systems also result in nuanced conclusions, with respect to de jure pressures. Fritz Scharpf's well-known argument that the EU is bound to liberalise our social systems is based on a determinist understanding of the role of the ECJ. This perspective views the Court as one-dimensional in its promotion of individual mobility and liberalisation; more importantly, the court is viewed as if its judgments leave very little leeway to the policies of individual Member States, while Member States are, collectively, unable to change the political framework that informs the judgments. Scharpf's influential account presents the Court as overpowering individual Member States that are limited in their power derived from their collective political deliberation, but such a view cannot be taken for granted. The evidence is more nuanced with regard to the leeway of Member States and the possibility of collective political action that reverses the Court's case law. Recent empirical research confirms that politics, both at the joint EU level and the Member State level, are more important than Scharpf's account suggests (Martinsen, 2015). It is important to recognise that the current legal constellation of

the EU includes normative resources in support of social protection and social solidarity (notably since the ratification of the Treaty of Lisbon, see the previous paragraph). These existing normative resources restore the equilibrium between market integration and social concerns. Furthermore, these normative resources create deontic power resources for individual citizens, which are important elements of the current acquis. It is apparent that market integration has created de facto and de jure pressures, but that does not validate the argument that the EU must now go beyond the current acquis, in order to counter the forces of negative integration.

These findings resonate the perspective presented in section 3: arguments that the 'imbalances' in the European project result from its reliance on 'negative integration' do not account for EU social rights. From an empirical point of view, they can be challenged as being overly deterministic; from a normative point of view, it is unclear how the development of material support or social rights at the EU level will address such imbalances.

There are functional arguments as to why the European Monetary Union should be equipped with automatic fiscal stabilisers, which support stabilisation capacities of the Member States. Stability is one of the essential objectives of monetary integration; stability is also a goal of systems of social protection; and, stability is a precondition for long- term success in the fight against poverty. A well-functioning monetary union must be an 'insurance union' that supports national insurance systems. Furthermore, there are relevant functional arguments as to why support for national insurance systems should be organised through targeted support for national unemployment benefit systems, due to the importance of the latter for stabilisation. However, without additional normative arguments, this functional account does not fully substantiate the conclusion that the EU should support national unemployment benefit systems that link such support to the constitution of individual social rights with regard to the quality of unemployment benefits for European citizens. Such normative arguments would have to explain why pan-European support for unemployment benefits is to be preferred over other stabilising mechanisms that are 'functional equivalents' in terms of stabilisation. These arguments would have to draw on the intrinsic value of adequate unemployment insurance in our societies. The same conclusion holds, a fortiori, for tentative functionalist arguments in support of a European framework directive on minimum income protection. Although adequate minimum income assistance can contribute to stability, purely functionalist arguments about a well-functioning monetary union will not advance us, without support from an independent normative account that is based on considerations of social justice. In his discussion of Viehoff's 'Eurozone Justice', Vandenbroucke insists on the need for a self-standing normative account for a conception that aims to link solidarity between EU Member States in times of crisis (with a view to stabilisation) with a mandate that Member States must organise adequate minimum income protection (Viehoff, 2018 ; Vandenbroucke, forthcoming a). He goes on to argue that a European framework directive on minimum income protection must, in some way, be based on a self-standing cosmopolitan concern with the well-being of individuals in more countries than just one's own[17].

[17] The normative argument for demanding adequate minimum income protection in all EU Member States can refer to a

As explained in section 2, Ferrera (forthcoming) argues that cross-border solidarity is a necessary component for the EU qua polity, especially for its stability over time. His argument is not 'functionalist', as this is defined in this paper (i.e, it is not about the prerequisites for a smoothly functioning monetary union); nor is it 'normative' as we understand that expression in this paper. Ferrera proposes a "free standing political justification of the 'necessity' of solidarity, based on a realist and empirical conception of what polities are and how they can 'keep together'". This is to say, a polity needs bounding, binding and bonding, and 'bonding' requires social sharing. It follows that cross-border solidarity is key to the EU's future as a polity. While Ferrara does not draw this conclusion in the referenced paper, it could be argued that 'social sharing', if implemented through a European fiscal capacity that supports the EU's welfare states when they are in need, should buttress the individual European citizens' right to minimum income protection, and therefore be associated with such an individual right. Social sharing across borders would then support social sharing within borders and instantiate the Union's caring role in the most salient way. This somewhat parallels Viehoff's argument about 'Eurozone Justice', although his argument is based on a conception of justice and not on the realist approach deployed by Ferrera. In fact, Vandenbroucke et al. previously introduced a down-to-earth pragmatic argument leading to a similar conclusion: they argued that a European framework directive on minimum income protection, which would impose adequate minimum income assistance on each EU Member State, might be seen as an 'unfunded mandate', if not accompanied by cross-border solidarity between richer and poorer Member States (Vandenbroucke et al, 2013a). As discussed in the previous subsections on social investment rights and fair working conditions, the bonding argument is compelling, but assessing its force and consequences requires a more thorough study that considers the positions of the European Parliament and citizens' attitudes. In fact, both the positions taken of Parliament in its resolutions on fighting poverty and the EU's responsibility, and citizens' positive attitudes with regard to European initiatives in the realm of minimum income protection, suggest that there is a democratic legitimacy that reinforces the fundamental argument of 'bonding'.

The upshot of all this is that the debate about the rationale for an EU role in minimum income protection remains open-ended. We will not find a 'silver bullet' argument that makes the case unambiguously. There might be arguments for the primary urgency of mutual assistance among EU Member States in the domain of unemployment insurance, given the need to establish effective eurozone stabilisers. This might be viewed as a priority over mutual assistance in the domain of minimum income protection. There might be arguments that a European framework directive on minimum income protection is the best way to show that the EU 'cares' about its citizens, which

reasoning *in abstracto* about moral cosmopolitanism and national welfare states. However, there is also a more contingent, EU-specific argument, leading from the principle of free movement and the shared aspiration to promote social cohesion through European integration, to the need for decent minimum income protection in each Member State; space forbids an elaboration on this argument here (see Vandenbroucke, 2019a). However, if a shared aspiration for social cohesion and free movement are the premise of an argument about the need for adequate minimum income protection in each EU Member State, one should acknowledge the contingent historical context on which it draws. Free movement, in particular, cannot be justified independently of the broader geopolitical considerations that justify the European project. Hence, our overall thinking about justice in the EU cannot be separated from the geopolitical origin and context of European integration.

corresponds with the ‘bonding’ rationale. Nevertheless, regardless of our position on these questions, arguments based on legitimacy and normative arguments that boil down to the need for a ‘caring’ Union have more purchase in a debate on the EU’s role in minimum income protection than negative integration or purely functionalist arguments.

# 4. Conclusions

In Section 2, we discussed four points of view from which one can develop a rationale for EU initiatives in the realm of social rights. We distinguished functional arguments, arguments about imbalances related to 'negative integration', legitimacy arguments based on 'bonding', and normative arguments. These four perspectives offer important insights; however, none of these rationales is sufficient in itself. We noted that the 'bonding' argument is the most compelling general argument for an EU role in the social domain, but it is also open ended in terms of its practical conclusions. It justifies a strong, visible and credible social dimension to the EU, which instantiates 'social sharing' and proves that the EU 'cares'. Nevertheless, it needs to be combined with other arguments to derive operational conclusions about how and the extent to which the EU should intervene in the constitution of social rights. In order to advance this debate, it is helpful to understand how social rights are constituted by a variety of individual power resources. The 'dissection' of the constitution of rights allows an understanding of the selective role the EU can play. The EU should be selective with regard to the domains of 'the social' in which it intervenes, and it should be selective with regard to the types of individual power resources it aims to provide in each of these domains. The EU's initiatives in the realm of social investment, fair working conditions and minimum income protection are based on different combinations of rationales, and these different rationales point to different modes of intervention.

The open-ended character of our conclusions should not come as a surprise. We should resist the idea that arguments on the EU's social dimension, as discussed in this paper, lead to definite and uncontroversial 'ought to' statements or definite and uncontroversial 'necessity' statements with regard to specific social policy initiatives. We inevitably remain at cross-roads where various rationales confront each other, and the deliberation on what 'ought to be done' is inevitably and deeply political. The EU is a political arena: scholars can clarify arguments and counter-arguments; they cannot replace political deliberation and the legitimacy it implies.

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